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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 161

JOSEPH WHELESS, WILLIAM M. REED, HALSTEAD BURNET, ET AL., APPELLANTS,

*vs.*

THE CITY OF ST. LOUIS ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED NOVEMBER 28, 1890.

(17,576.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 13, 1900.

1 UNITED STATES OF AMERICA, }
*Eastern Division of the Eastern Judicial District of Missouri,* } ss:

In the Circuit Court of the United States in and for the Eastern Division of said District.

Be it remembered that on the 3rd day of October, A. D. 1899, there was filed in the clerk's office of said court a certain bill of complaint in words and figures as follows, to wit:

2 UNITED STATES OF AMERICA, }
*Eastern Division, Eastern District of Missouri,* } ss:

In the Circuit Court of the United States. In Equity.

To the honorable judges of the circuit court of the United States in and for the eastern division of the eastern district of Missouri:

The Bill of Complaint of JOSEPH WHELESS, S. MALONE Wheless, and Thomas M. Wheless, William R. Barnhart, Solomon L. Cohen, William L. Reed and Mary S. Reed, His Wife; Halstead Burnet and Mary Burnet, His Wife; Richard Shinnick and Isabelle Shinnick, His Wife; Robert R. Grant, John Gaughan, Ewing Hill and Octavia Hill, His Wife; Charles Herboth, Thomas B. Chambers, Joseph M. Crotty, Richard M. Crotty, Andrew Morello, William Morris and Margaret Morris, His Wife, Complainants,

*versus*

THE CITY OF ST. LOUIS, ROBERT E. MCMATH, President of the Board of Public Improvements of the City of St. Louis, and The Gilsonite Roofing & Paving Co., a Corporation, Defendants.

Your orators respectfully represent unto your honor that they are severally the owners of certain real-estate property in the city of St. Louis fronting and abutting on Whittier street between Washington boulevard and Finney Ave., in said city, and that they own a large majority and nearly all of the frontage of the property along the line of the said Whittier St. between the said limits, and that your orator, Thomas B. Chambers, is a non-resident of the State of Missouri and is a citizen of the State of Ohio, resident in the city of Cincinnati, and the complainants sue and bring this suit for themselves and on behalf of any and all others who may be in like situation with them and interested in the subject-matter thereof.

3 The defendant The City of St. Louis is a municipal corporation of the State of Missouri, organized and administered under a special charter duly ratified and adopted by the qualified voters of said city at an election held for that purpose on the 7th day of November, 1876, the same being a public law of the State of Missouri; the defendant Robert E. McMath is the duly elected, qualified, and acting president of the board of public improvements of

said city, said board being a public department of the legal organization of said city as established by its said charter, the said board and its said president being thereby charged with certain duties, as hereinafter indicated, and the defendant The Gilsonite Roofing & Paving Company is a corporation under the laws of the State of Missouri and having its principal office and place of business in the said city of St. Louis.

Your orators further show that the said defendant, The City of St. Louis, is authorized and empowered by its said charter to establish, maintain, and repair the streets, etc., of the said city and to provide for the costs and expenses thereof, such power and authority being conferred on said city by section 26, article III, of said charter, the same being in words and figures as follows, to wit:

"SEC. 26. The mayor and assembly shall have power within the city, by ordinance not inconsistent with the constitution or any law of this State, or of this charter: * * *

"Second. To establish, open, vacate, alter, widen, extend, pave, or otherwise improve and sprinkle all streets, avenues, sidewalks, alleys, wharves and public grounds and squares, and provide for the payment of the costs and expenses thereof in the manner in this charter prescribed; and also to provide for grading, lighting, cleaning and repairing the same, and to condemn private property for public uses as provided for in this charter; to construct and keep in repair all bridges, streets, sewers and drains, and to regulate the use thereof."

Said charter further provides for the creation of a board of public improvements and a president thereof, and prescribes their duties in respect of the making, repairing, and maintaining of such streets, etc., and provides for the passing of ordinances by the municipal assembly of said city for said purposes, and provides for the letting of contracts for the doing of work necessary thereto and for the costs and expenses of said improvements, it being provided in said charter, in *th* article VI thereof, as follows, to wit:

4 "SEC. 17. The board of public improvements shall recommend to the assembly ordinances for the repairing and cleaning of all streets, alleys and highways, and for the construction of cross-walks, and no ordinance therefor shall be passed without such recommendations.

"SEC. 18. The cost of construction of all the foregoing improvements within the city shall be apportioned as follows: The grading of new streets, alleys, and the making of cross-walks, and the repairs of all streets and highways and the cleaning of the same, and of all alleys and cross-walks, shall be paid out of the general revenue of the city; and the paving, curbing, guttering, sidewalks, and the materials for the roadways, the repairs of all alleys and sidewalks, shall be charged upon the adjoining property as a special tax, and collected and paid as hereinafter provided. Whenever the estimated special taxes to be assessed against any property shall in the aggregate amount to more than twenty-five per cent. of the assessed value of said property, calculating a depth to such property of one hundred and fifty feet, then the assembly shall provide out of the general

revenue for the payment of the amount in excess of the said twenty-five per cent."

Amended by inserting charter sections 24 & 25, art. VI.

Your orators further show that, acting under and by virtue of the pretended authority of the provisions of said charter hereinbefore referred to and set out, the said municipal assembly of the city of St. Louis passed a certain ordinance, entitled "An ordinance to improve Whittier street between Washington Bl. and Finney Ave.," the same being known as ordinance No. 19681, approved February 1, 1899, providing for a certain improvement by the construction or paving of that portion of the said Whittier St., as aforesaid, and for the assessing of the costs thereof, the said ordinance being in words and figures as follows—that is to say:

"An ordinance to improve Whittier street between Washington boulevard and Finney avenue.

"Be it ordained by the municipal assemble of the city of St. Louis as follows:

"SEC. 1. The board of public improvements is hereby authorized and directed to cause Whittier street, between Washington Bl. and Finney Ave., to be improved by grading, preparing ground for the superstructure, curbing, guttering, laying a roadway pavement of vitrified paving brick on a concrete base and making all proper connections and intersections with other streets and alleys."

(Sec. 2 and 3 provide for the material and manner of construction of said street.)

"SEC. 4. The cost of preparing ground for the superstructure, curbing and guttering, concrete, vitrified brick pavement and all proper connections and intersections required shall be charged as a lien upon the adjoining property fronting or bordering on the improvement herein provided for, and shall be paid by the owners thereof, except as hereinafter provided. When said work is completed, the president of the board of public improvements shall compute the cost thereof, and levy and assess the same as a special tax against each lot of ground chargeable therewith, in the names of the owners thereof, respectively, in the proportion that the linear feet of each lot fronting or bordering on said improvement bears to the total number of linear feet of all the property chargeable with the special tax aforesaid, and shall make out and certify to the comptroller, on behalf of the contractor, bills of such cost and assessment, accordingly, as required by law.

"SEC. 5. Whereas the estimated cost of preparing ground for the superstructure, curbing, guttering, concrete, vitrified brick pavement and all proper connections and intersections required, as provided for by this ordinance, to be assessed against some of the lots fronting or bordering on the aforesaid improvement, amounts to more than twenty-five per centum of the assessed value of said lots, therefore, the amount in excess of twenty-five per centum and the cost of grading shall be paid by the city of St. Louis, and the sum of eight hundred and fifty dollars is hereby appropriated on account

thereof, payable out of the fund set apart for street improvements." Approved February 1, 1899.

Your orators further show to your honor that, acting under the foregoing provisions of the charter and general ordinances of said city and of said ordinance No. 19681, the said defendant, The City of St. Louis, on or about the 24th day of April, 1899, let and entered into a certain contract in writing, known as contract No. 5358, with the said defendant, The Gilsonite Roofing and Paving Co., whereby the said city awarded to and the said company accepted and undertook "the work of preparing ground for the superstructure, curbing, and guttering, three feet wide, and laying a roadway pavement on Whittier St. between Washington Bl. and Finney Ave.," etc., the said contract setting out the said charter and ordinance provisions and the specifications and general stipulations under which said contract was let and said work should be performed, and all such being made a part of said contract between said parties, and it being provided that said work should be begun within one week after written notice to do so should be given said company by the street commissioner of said city and should be fully completed within two months thereafter, the time of beginning, rate of progress, and time of completion being made essential conditions of said contract, a copy of which is hereto attached as Exhibit "A."

6 And it further expressly provided in said contract, in respect of the manner of payment for the work of improvement thus contracted to be done, as follows—that is to say:

"When all the work embraced in this contract is fully completed, agreeable to the specifications and stipulations of this agreement, and accepted by the street commissioner, said commissioner shall cause a careful measurement of said work to be made, and certify the same to the board of public improvements, who shall compute the cost thereof according to the terms and prices of this agreement, and levy and assess the same as a special tax against each lot of ground chargeable therewith, in the names of the owners thereof, except the amount in excess of twenty-five per centum of the assessed value of said property, which shall be paid by the city out of the funds available under ordinance No. 16981. And said special tax bills shall be made out by the president of the board of public improvements and by him registered in his office in full, and certified and delivered to the comptroller, and his receipt taken therefore, and by him registered and countersigned and delivered to the party of the first part (the defendant Gilsonite Roofing & Paving Co.) in whose favor they are issued for collection, and his receipt taken in full of all claims against the city on account of said work."

And your orators state that the cost and price of doing said work, as estimated by the said contracting parties under the agreed prices for said work stipulated in said contract, and which cost would be and is about to be levied and assessed as a special tax against the property of your orators abutting said improvement, and which would constitute a lien and encumbrance on the same and be a cloud on their respective titles, amounts to a sum largely in excess of ten thousand dollars.

Your orators further represent to your honor that the said contract was entered into between the said defendant parties, and the excessive costs of said improvement to be a tax and lien upon complainants' property *was* therein assessed and contracted without their knowledge or consent and without opportunity or right allowed them to be heard as to the reasonableness, justness, or propriety of the prices and costs thus sought to be assessed against their property, but the same is arbitrary, unjust, and excessive, and complainants state that under said charter and ordinances they are denied the right to be heard on or defend against said arbitrary and excessive tax thus levied upon their property by the said defendant city.

7 Your orators further represent unto your honor that the extent, quality, and value of their respective properties abutting on said improvement differ greatly *inter sese*, and the amount of benefits or damages accruing to or suffered by their several lots and the proportionate tax against them respectively are very unequal and disparate. The said Whittier St. is what is known as a "side street," and runs from north to south between the said terminal streets and across and at right angles to the said Washington & Finney Aves. and other intermediate and principal streets on which complainants' lots principally front. The depth of said lots on the said principal streets varies greatly, some being narrow strips of 25 or 30 feet front thereon and others having a frontage or depth of 50 or 100 feet and more, the value of said several lots differing greatly according to their depth and situation and according to the improvements on the same, some of said lots being vacant and others improved with costly residence and business buildings; and your orators show that the benefits, if any they may receive, accruing to the several lots on the line of said improvement differ greatly from lot to lot, as above indicated, and some of said lots have suffered distinct and serious damage, some by cuts and changes of grade in their front and others by having considerable parts taken off them and imposed with a burden of roadway and sidewalks in the course of said construction, and the amount of special tax sought to be assessed and levied against said lots respectively, in proportion to the linear feet of each lot as provided in said charter and ordinance, is unequal and disproportionate to the value of said lots, some lots being liable to an assessment equal to a very small percentage of their value, while "the cost to be assessed against some of the lots fronting or bordering on the aforesaid improvement amounts to more than twenty-five per centum of the assessed value of said lots," as recited in terms in the said ordinance No. 19681, the proportion of said special assessment which is threaten-d to be levied against the abutting lots of one of these complainants, your orator, Barnhart, being in excess of two thousand dollars, and which is greatly in excess of any possible benefits which might accrue to said lots

8 chargeable therewith, all of which are vacant and unimproved, and in this and other instances the said assessment amounts to a practical confiscation of the property so made chargeable.

Your orators further state that, acting under said ordinance and contract, the defendant Gilsonite Roofing & Paving Co. undertook said work and has carried the same practically to completion as therein specified, and it has been or is about to be and will be accepted on behalf of said defendant city by its said street commissioner, who has or is about to and will certify the measurement thereof, as provided in said ordinance and contract, to the defendant McMath, the president of the board of public improvements of said city; and your orators show unto your honor that the said defendant, McMath, as such president of the board of public improvements, will and is about to levy and assess the costs of the said improvement in an amount largely in excess of ten thousand dollars as a special tax against the property of these complainants, and is about to and will, unless restrained by this honorable court, make out, certify, and deliver to the comptroller of said defendant city and through him to the defendant company, in payment for said work, special tax bills against the property of these complainants, which will constitute a first and prior lien on their said several lots respectively, subjecting them to the liability of being sold to satisfy the lien of said special assessment and tax bills.

Your orators further show to your honor that by the provisions of said charter, ordinance, and contract hereinbefore set out the costs and expenses of said public improvement *is* charged as a lien against their several lots, which are their private property, fronting or bordering on said improvement in the proportion that the linear feet of each lot fronting or bordering on said improvement bears to the total number of linear feet of all the property chargeable with the special tax aforesaid and in an arbitrary amount per each linear foot irrespective of the value of said property or whether the same is benefited by such alleged improvement or not and regardless of the amount of any such benefit and in spite of whether the said prop-
9 erty is actually damaged by the so-called improvement; and your orators show that under the provisions of the said charter and ordinance there is no provision made and no method prescribed or allowed for the ascertaining or assessing of the benefits and damages caused to the abutting property by said public work, nor is the same at all taken into account under said legal provisions, nor are your orators allowed under said provisions of law and the decisions of the law by the supreme court of Missouri to plead or raise the question of benefits and damages nor to make such a defense, and no legal proceedings are provided or allowed wherein such claim and defense may be heard and determined; but complainants aver that the said ordinance was passed and said contract let and said excessive cost incurred without opportunity or right to them to be heard in this behalf, and the said tax bills provided therein will be issued and a lien on your orators' property, and by express decision of the supreme court of said State the right is denied to your orators to defend suits against them to enforce said liens by reason of the inequality of said assessments and the failure of special benefit to their respective properties; and your orators aver that, although said legal provisions are in conformity with the law in the

State of Missouri and have been expressly upheld by the highest court of said State, nevertheless the same are repugnant to the constitution of the State of Missouri in its article II, sections 66 and 67 and 76, and to the Constitution of the United States in *the* articles V and XIV of the amendments thereto, in that they deny to your orators due process of law and subject their private property to being taken for public uses without compensation.

And your orators further show to your honor that, acting under the pretended sanction of said charter and ordinance provisions and the terms of payment of said contract, the said defendant, City of St. Louis, by and through the defendant president of the
10 board of public improvements, is about to levy and assess against the abutting property of these complainants the costs and expenses of said work and public improvement in an amount in excess of ten thousand dollars, and is about to issue to the defendant The Gilsonite Roofing & Paving Co. and the said company is about to demand and receive in payment thereof special tax bills in the names of and against the property of these complainants, which said levy and assessment when made and said tax bills when issued will be and are a lien on said property and a cloud on the title thereto; and your orators are denied the right by said charter and the law of Missouri to defend suits to satisty said tax bills by the sale of their said property; and complainants aver, by reason of the premises, that the said provisions of the charter of the defendant city and of the said ordinance 19681 and of the said contract with the defendant company are illegal, unconstitutional, and wholly void, and the levy and assessment of said costs and the issue of said special tax bills against complainants and their property are without just warrant of law and *is* usurpative, illegal, and void, but this the said defendants are threatening to do, and unless enjoined by order of this honorable court will straightway proceed to do, and your orators would thus suffer irreparable damage to their property and are wholly without adequate remedy at law to defend and protect their rights in this behalf.

Premises considered, your orators pray that the several parties herein named as defendants be made parties defendant hereto by the service of proper process, returnable to an early rule day, and that they be required to answer this bill, but not under oath, which is waived.

That a temporary writ of injunction or restraining order issue out of this honorable court, directed to the said several defendants, enjoining the city of St. Louis and president of the board of public improvements of said city from levying or assessing the costs and expenses of the said improvement of Whittier street against the property thereon abutting of these complainants and those for whose use this suit is brought, and from issuing or attempting to
11 issue special tax bills against these complainants or their property, or from otherwise creating liens or incumbrances against their said property or causing a cloud on the title thereto, and that the said defendant, The Gilsonite Roofing & Paving Company, their successors and assigns, be enjoined from demanding and

receiving any such special tax bills against the property of these complainants, and from proceeding or attempting in anywise to create or enforce a lien on complainants' property by reason of said work or payment therefore, or from in anywise attempting to subject complainants or their property to the payment of the costs and expenses of said work or any part thereof, and that on final hearing said injunction be made perpetual.

And that the court by its decree declare the provisions of the foregoing charter, ordinance, and contract, in so far as they pretend to impose the costs of said public improvement on these complainants or their property, to be illegal, unconstitutional, and void and without force or effect whatever to that end, and for such other and further and general relief as to your orators in equity and good conscience may belong.

JOSEPH WHELESS &
LEE W. GRANT,
*Attorneys for Complainants.*

UNITED STATES OF AMERICA, } ss:
*Eastern District of Missouri,* }

Joseph Wheless, one of the parties complainant hereto, being duly sworn, on his oath says that the statements made in the foregoing bill are true in substance and in fact.

JOSEPH WHELESS.

Sworn to and subscribed before me this 3rd day of October, A. D. 1899.

[SEAL.] JAMES R. GRAY,
*United States Commissioner at St. Louis, Missouri.*

12 Upon the filing of said bill there was issued out of the clerk's office of said court a subpœna in chancery, which, with the marshal's return of service endorsed thereon, is in words and figures as follows, to wit:

(*Subpœna in Chancery.*)

UNITED STATES OF AMERICA, } sct:
*Eastern Division of the Eastern Judicial District of Missouri,* }

In the Circuit Court of the United States in and for the Eastern Division of said District.

The President of the United States of America to the City of St. Louis, Robert E. McMath, president of the board of public improvements of the city of St. Louis, and the Gilsonite Roofing & Paving Co., a corporation, Greeting:

You are hereby commanded to be and appear at rules to be held at the office of the clerk of the circuit court of the United States in and for the eastern division of the eastern judicial district of Missouri, on the first Monday of November next, at the city of St. Louis,

then and there to answer the bill of complaint of Joseph Wheless, S. Malone Wheless, and Thomas M. Wheless, William R. Barnhart, Solomon L. Cohen, William L. Reed and Mary S. Reed, his wife; Halstead Burnet and Mary Burnet, his wife; Richard Shinnick and Isabelle Shinnick, his wife; Robert R. Grant, John Gaughan, Ewing Hill and Octavia Hill, his wife; Charles Herboth, Thomas B. Chambers, Joseph M. Crotty, Richard M. Crotty, Andrew Morello, William Morris and Margaret Morris, his wife, citizens of the State of Missouri, except Thomas B. Chambers, who is a citizen of the
13 State of Ohio, filed against you on the 3rd day of October, 1899. Hereof fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 3rd day of October, 1899.

Issued at office, in the city of St. Louis, under the seal of
[SEAL.] said circuit court, the day and year last aforesaid.

T. L. CRAWFORD, *Clerk.*

MEM.—The defendants to enter their appearance in this suit in the clerk's office on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso.*

T. L. CRAWFORD, *Clerk.*

(*Marshal's Return.*)

UNITED STATES OF AMERICA, }
*Eastern Division of the Eastern Judicial District of Missouri,* } *sct:*

I certify that I executed this writ at the city of St. Louis, in the eastern judicial district of Missouri, on the 3rd day of October, 1899, by delivering a certified copy thereof to Henry Ziegenhein, mayor of the within-named defendant corporation, The City of St. Louis, and by delivering a like copy to the within-named defendant, Robert E. McMath, president of the board of public improvements of the city of St. Louis, and by delivering a like copy to F. W. Nolker, president of the within-named defendant corporation, The Gilsonite Roofing and Paving Company.

LOUIS C. BOHLE,
*U. S. Marshal, Eastern District of Missouri.*

14 And at the September term, A. D. 1899, of said court, to wit, on said 3rd day of October, A. D. 1899, the following, among other, proceedings were had and appear of record in said cause, to wit:

(*Order to Show Cause.*)

JOSEPH WHELESS ET AL., Complainants,
*vs.*
THE CITY OF ST. LOUIS, ROBERT E. McMATH, President of the Board of Public Improvements of the City of St. Louis, and The Gilsonite Roofing & Paving Co., a Corporation, Defendants. } 4234.

Now come the complainants, by their solicitors, and file their bill of complaint herein, and on motion of said solicitors it is—

Ordered that the said defendants show cause before this court on Saturday, October 7th, 1899, at 10 o'clock a. m., why a temporary injunction and restraining order should not be issued against them as prayed in said bill of complaint.

It is further ordered that a copy of this order, together with a copy of the bill of complaint, be served upon the mayor of the city of St. Louis, and also upon the defendant The Gilsonite Roofing & Paving Co.

And it is further ordered that a copy of this order be served upon defendant Robert E. McMath, president of the board of public improvements of the city of St. Louis.

(Signed) ELMER B. ADAMS, *Judge.*

October 3, '99.

15 Upon a duly certified copy of above order appears the following return of the marshal, to wit:

(*Marshal's Return.*)

UNITED STATES OF AMERICA,
*Eastern Division of the Eastern Judicial District of Missouri,* } *ss:*

I certify that on the 3rd day of October, 1899, at the city of St. Louis, in the above-named district, I delivered a certified copy of the annexed order to show cause to Henry Ziegenhein, mayor of the within-named defendant corporation, The City of St. Louis, and by delivering a like copy to the within-named defendant, Robert E. McMath, president of the board of public improvements of the city of St. Louis, and F. W. Nolker, president of the within-named defendant corporation, The Gilsonite Roofing and Paving Company.

LOUIS C. BOHLE,
*United States Marshal.*

And afterwards, to wit, on the 7th day of October, A. D. 1899, there was filed in said cause a plea to jurisdiction in words and figures as follows, to wit:

(*Plea to Jurisdiction.*)

16 UNITED STATES OF AMERICA,
*Eastern Division of the Eastern Judicial District of Missouri,* } *ss:*

In the Circuit Court of the United States for said Eastern Division of the Eastern Judicial District of Missouri. In Equity.

JOSEPH WHELESS, S. MALONE WHELESS, and THOMAS M. Wheless, William R. Barnhart, Solomon L. Cohen, William M. Reed and Mary S. Reed, His Wife; Halstead Burnet and Mary Burnet, His Wife; Richard Shinnick and Isabelle Shinnick, His Wife; Robert R. Grant, John Caughan, Ewing Hill and Octavia Hill, His Wife; Charles Herboth, Thomas B. Chambers, Joseph K. Crotty, Richard H. Crotty, Andrew Morello, William Morris and Margaret Morris, His Wife, Complainants,

*vs.*

THE CITY OF ST. LOUIS, ROBERT E. MCMATH, President of the Board of Public Improvements of the City of St. Louis, and The Gilsonite Roofing and Paving Co., a Corporation, Defendants. } No. 4234.

Now come The City of St. Louis and Robert E. McMath, president of the board of public improvements, two of the defendants in the above-entitled cause, and now and at all times hereafter saving and reserving unto themselves and each of them all manner of benefit and advantage of exceptions which may be had or taken to the manifold errors and insufficiencies in said bill of complaint contained, and appearing only for the purposes set forth in this plea, and for their separate return to the order heretofore entered to show cause why a temporary injunction ought not to be granted upon said bill of complaint, file this their plea to the jurisdiction of the court, and for grounds of such plea aver:

First. That the court is without jurisdiction to hear and
17 determine the cause of action sought to be set forth in said bill of complaint.

Second. That there is not any matter in dispute between the defendants or any of them and any one of the complainants in said bill which *matter* exceeds, exclusive of interest and costs, the sum or value of two thousand dollars.

Third. These defendants are not informed, save by said bill of complaint, as to whether one of the complaintants, to wit, Thomas B. Chambers, is a non-resident of the State of Missouri and is a citizen of the State of Ohio, resident in the city of Cincinnati, and therefore deny such allegation; but these defendants specifically allege the fact to be that, whether or not said Thomas B. Chambers is a non-resident of the State of Missouri, the amount in dispute be-

tween said Thomas B. Chambers and the defendants does not exceed, exclusive of interest and costs, the sum or value of two thousand dollars, and these defendants show unto your honor that the said Thomas B. Chambers is the only complainant who is, by said bill of complaint, alleged to be a non-resident of the State of Missouri and a citizen of any other State.

Fourth. These defendants specifically deny that the proportion of special assessment which is threatened to be levied against the abutting lots of one of the complainants, to wit, William R. Barnhart, is in excess of two thousand dollars, as set forth in said bill of complaint; and these defendants respectfully show unto your honor that the allegation concerning the amount of the assessment against the lots of the said complainant, Barnhart, is the only allegation in said bill of complaint showing or tending to show that the amount in dispute between any one of the complainants and the defendants exceeds the sum of two thousand dollars; and these defendants allege the fact to be that the assessments which would be levied upon the lots belonging to the said complainant, Barnhart, by reason of the improvement of Whittier street, set forth in the bill of complaint, in the aggregate amount to far less than the sum of
18 two thousand dollars, and do not and will not exceed the sum of fourteen hundred dollars.

Fifth. It appears upon the face of the bill of complaint that the several complainants are and will be charged separately with the several amounts to be assessed against them for the improvement of Whittier street; therefore the amounts assessed against the several complainants separately cannot be added together in order to give the court jurisdiction. Since the matters in dispute are separate and distinct, and no one exceeds in value the sum of two thousand dollars, they cannot be joined in one suit, for convenience or economy or for any other reason, so as to give this court jurisdiction.

All which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

And, to the end that the question of the jurisdiction of this court may be determined at the threshold of the case, these defendants pray the court that the issues of fact herein set forth may be determined separately and before any other or further action shall be required of these defendants to show cause why the temporary injunction prayed for in the bill of complaint herein should not be granted.

B. SCHNURMACHER,
CHAS. CLAFLIN ALLEN,
*Attorneys for Defendants The City of St. Louis and Robert E. McMath, President of the Board of Public Improvements of said City.*

19 And at said September term, A. D. 1899, of said court, to wit, on said 7th day of October, A. D. 1899, the following

further proceedings were had and appear of record in said cause, to wit:

(*Plea to Jurisdiction Submitted.*)

JOSEPH WHELESS ET AL., Complainants,
*vs.*
THE CITY OF ST. LOUIS ET AL., Defendants. } 4234.

Now comes said parties, by their respective solicitors—the complainants by Joseph Wheless, the defendants City of St. Louis and R. E. McMath by B. Schnurmacher and Charles Claflin Allen, and the defendant Gilsonite Roofing & Paving Co. by Kehr & Tittman—and thereupon the plea to the jurisdiction of the court, this day filed, is argued by counsel and submitted to the court.

Affidavit of Varrelmann filed.

Said affidavit is in words and figures as follows, to wit:

(*Affidavit of Chas. Varrelmann.*)

UNITED STATES OF AMERICA,
*Eastern Division of the Eastern Judicial District of Missouri,* } *ss:*

In the Circuit Court of the United States for said Eastern Division of the Eastern Judicial District of Missouri.

JOSEPH WHELESS ET AL., Complainants,
*vs.*
THE CITY OF ST. LOUIS ET AL., Defendants. } In Equity. No. 4234.

20 Charles Varrelmann, being duly sworn, on his oath says that he is the street commissioner of the city of St. Louis, duly qualified and acting as such street commissioner, and has been such commissioner since about June first, eighteen hundred and ninety-nine, and theretofore for many years affiant was in charge of the construction of streets in the street department of the city of St. Louis. Affiant has personal knowledge of the improvement of Whittier street between Washington boulevard and Finney avenue, and has been familiar with the special projected improvement since it was first proposed by the street commissioner in 1897. Affiant further says that from actual measurements upon a plat of said street for said improvement and a calculation of the cost which will be assessed against the abutting property on said Whittier street under ordinance No. 19681, affiant has knowledge of the approximate amount which will be assessed against each and every lot on said street. Affiant says that no lot of land on said street which is or will be subject to assessment for said tax for the improvement of said street under said ordinance will be assessed to an amount equal to two thousand dollars. Affiant further says that no person owning lots on said street will have an assessment against all of the lots owned by such person which in the aggregate will amount to two thousand dollars. Affiant more specifically says that the lots belonging to the complainant Thomas B. Chambers will not have as-

sessed against them for said special tax to exceed the sum of one hundred and seventy-five dollars. This affiant further says specifically that the lots belonging to William R. Barnhart are two in number in separate portions of said street; that one of said lots will be assessed approximately six hundred dollars and the
21 other will be assessed approximately seven hundred and eighty dollars, making a total of thirteen hundred and eighty dollars to be assessed against all of the lots owned by complainant William R. Barnhart. This affiant further says that until the actual measurements of the improvement have been made after the completion of the work it is impossible to make a calculation absolutely exact because of very slight variations in measurements; but this affiant says that under no circumstances, nor by any calculation which can be made under said ordinance No. 19681 and the contract for the improvement of said street under which said work is done, can the assessment against the property of said William R. Barnhart exceed the sum of fourteen hundred dollars.

And this affiant further says that no property belonging to any one complainant in this cause of action which is to be assessed on said lot will be assessed in an amount exceeding or equal to said sum of fourteen hundred dollars. Further affiant says not.

CHAS. VARRELMANN.

Subscribed and sworn to before me this seventh day of October, 1899.

[SEAL.] JAMES R. GRAY,
*U. S. Commissioner.*

Endorsed: "Affidavit of Chas. Varrelmann. Filed Oct. 7, 1899. T. L. Crawford, clerk."

22 And afterwards, at the said September term, A. D. 1899, of said court, to wit, on the 11th day of October, A. D. 1899, the following further proceedings were had and appear of record in said cause, to wit:

(*Entry of October 7, 1899, Vacated, &c.*)

JOSEPH WHELESS ET AL., Complainants,
*vs.*
THE CITY OF ST. LOUIS ET AL., Defendants. } 4234.

Ordered that the entry made in this cause on October 7, 1899, be vacated, and that the following be entered in lieu thereof, *nunc pro tunc:*

Now come said parties, by their respective solicitors, and the defendants file their plea to the jurisdiction of the court, and complainants file their demurrer to said plea. Thereupon said demurrer is argued by counsel and submitted to the court.

(Signed) ELMER B. ADAMS, *Judge.*

October 11, '99.

Said demurrer to plea to jurisdiction is in words and figures as follows, to wit:

(*Demurrer to Plea to Jurisdiction.*)

In the Circuit Court of the United States.

JOSEPH WHELESS ET AL. }
*vs.* } # 4234.
CITY OF ST. LOUIS ET AL. }

Come now the complainants jointly, on this 7th day of October, 1899, and demur to the plea this day filed by defendants to the jurisdiction of this court in the premises, and for ground of de-
23 murrer say that the matters alleged in said plea, if true, do not show facts inconsistent with the jurisdiction of this court and do not constitute a valid and sufficient plea to the jurisdiction of the court.

Wherefore complainants pray the judgment of the court in the premises.

JOSEPH WHELESS &
LEE W. GRANT,
*Att'ys for Complainants.*

Endorsed: "Demurrer to plea to jurisdiction. Filed Oct. 11, 1899, *nunc pro tunc* as of Oct. 7, '99. T. L. Crawford, clerk."

And at said September term, A. D. 1899, of said court, to wit, on said 11th day of October, A. D. 1899, the following further proceedings were had and appear of record in said cause, to wit:

(*Order Overruling Demurrer to Plea to Jurisdiction.*)

JOSEPH WHELESS ET AL., Complainants, }
*vs.* } 4234.
THE CITY OF ST. LOUIS ET AT., Defendants. }

The court having fully considered the demurrer to the plea to jurisdiction, heretofore submitted herein, doth order that said demurrer be overruled.

(Signed) ELMER B. ADAMS, *Judge.*

October 11, '99.

And afterwards, at the said September term, A. D. 1899, of said court, to wit, on the 26th day of October, A. D. 1899, the following further proceedings were had and appear of record in said cause, to wit:

24 (*Order Sustaining Plea to Jurisdiction and Dismissing Bill.*)

JOSEPH WHELESS, S. MALONE WHELESS, and THOMAS M. Wheless, William R. Barnhart, Solomon L. Cohen, William L. Reed and Mary S. Reed, His Wife; Halstead Burnet and Mary Burnet, His Wife; Richard Shinnick and Isabelle Shinnick, His Wife; Robert R. Grant, John Gaughan, Ewing Hill and Octavia Hill, His Wife; Charles Herboth, Thomas B. Chambers, Joseph M. Crotty, Richard M. Crotty, Andrew Morello, William Morris and Margaret Morris, His Wife, Complainants,

*vs.*

THE CITY OF ST. LOUIS, ROBERT E. MCMATH, President of the Board of Public Improvements of the City of St. Louis, and The Gilsonite Roofing & Paving Co., a Corporation, Defendants.

4234.

Now come the parties, by their respective solicitors, and the complainants admitting the truth of the averments contained in the defendants plea to jurisdiction heretofore filed and declining to plead further thereto, it is now, on motion of defendants' solicitors, by the court—

Ordered, adjudged, and decreed that the said plea to jurisdiction be sustained, and that the bill of complaint herein be, and the same is hereby, dismissed at complainants' costs, and that a fee bill or execution issue therefor.

(Signed) ELMER B. ADAMS, *Judge.*

October 26, '99.

25 And afterwards, at the said September term, A. D. 1899, of said court, to wit, on the 27th day of October, A. D. 1899, the following further proceedings were had and appear of record in said cause, to wit:

(*Order Allowing Appeal, &c.*)

JOSEPH WHELESS ET AL., Complainants,
*vs.*
CITY OF ST. LOUIS ET AL., Defendants.
4234.

Now come complainants, by solicitor, and file assignment of errors and motion for appeal from the decree heretofore rendered herein to the Supreme Court of the United States; on consideration whereof, it is ordered that said appeal be allowed; and it is further ordered that upon complainants giving an appeal bond in the penal sum of five hundred dollars, the clerk of this court make out and certify to said Supreme Court of the United States a full, true, and complete transcript of the record and proceedings in this cause.

Said assignment of errors and motion for appeal is in words and figures as follows, to wit:

26 (*Assignment of Errors & Motion for Appeal.*)

In the Circuit Court of the United States, October Term, 1899.

JOSEPH WHELESS ET AL.
*vs.*
CITY OF ST. LOUIS ET AL. } No. 4234.

Come now the complainants, by their counsel, and except to the rulings and order of the court heretofore rendered at this term of court in overruling their demurrer to the plea of the defendants and in dismissing their bill for want of jurisdiction and assign the same for error, and for matter of their assignment of errors say:

1st. The court erred in overruling the demurrer to the plea to the jurisdiction of the court.

2nd. The court erred in dismissing the bill for want of jurisdiction.

3rd. The court erred in holding that it had no jurisdiction of the bill, because the amount of special tax which might be assessed against any one of the complainants severally would not exceed the sum or value of $2,000.

4th. The court erred in holding that the entire amount of the special tax to be assessed and levied under the ordinance and contract as the cost of the improvement of Whittier street, viz., over $10,000.00, was not the matter in dispute and within the jurisdiction of the court.

Wherefore complainants file this their assignment of errors to the said orders and rulings of the court, and in open court pray that the question of the jurisdiction of this honorable court in the premises be duly certified and an appeal allowed to the next term of the Supreme Court of the United States.

JOSEPH WHELESS &
LEE W. GRANT,
*Solicitors for Complainants.*

Endorsed: "Assignment of errors and motion for appeal. Filed Oct. 27, 1899. T. L. Crawford, clerk."

27 And afterwards, at the said September term, A. D. 1899, of said court, to wit, on the 7th day of November, A. D. 1899, the following further proceedings were had and appear of record in said cause, to wit:

(*Appeal Bond Approved and Filed.*)

JOSEPH WHELESS ET AL., Complainants,
*vs.*
CITY OF ST. LOUIS ET AL., Defendants. } 4234.

Now come complainants, by their solicitor, and present an appeal bond, which is approved by the court and filed.

Said appeal bond is in words and figures as follows, to wit:

(Appeal bond.)

Know all men by these presents that we, Joseph Wheless, Wm. M. Reed, Halstead Burnet, Richard Shinnick, John F. Gaughan, Chas. A. Herboth, Michael M. Crotty, and The American Bonding and Trust Company of Baltimore City, as surety, are held and firmly bound unto the City of St. Louis, Robert E. McMath, president of the board of public improvements of the city of St. Louis, & the Gilsonite Roofing & Paving Co., a corp., in the full and just sum of five hundred dollars, to be paid to the said city of St. Louis, Robert E. McMath, & Gilsonite Roofing & Paving Co., their heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 27th day of October, in the year of our Lord one thousand eight hundred and ninety-nine.

28 Whereas lately, at the September term, A. D. 1899, of the circuit court of the United States for the eastern division of the eastern judicial district of Missouri, in a suit depending in said court between Joseph Wheless *et al.*, plaintiffs, and The City of St. Louis *et al.*, defendants, a decree was rendered against the said Joseph Wheless *et al.* dismissing their bill for the alleged want of jurisdiction in said court to entertain it, and the said Joseph Wheless *et al.* have obtained an appeal *of* the said court to reverse the said decree of dismissal in the aforesaid suit, said appeal being taken & allowed in open court during the said September term, 1899, returnable to the Supreme Court of the United States, at the city of Washington, D. C., thirty days from and after the date of said appeal:

Now, the condition of the above obligation is such that if the said Joseph Wheless *et al.*, complainants & appellants, shall prosecute said appeal to effect and answer all damages and costs if they fail to make good their said appeal, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

JOSEPH WHELESS, [SEAL.]
WM. M. REED,
HALSTEAD BURNET,
RICHARD SHINNICK,
JOHN F. GAUGHAN,
CHAS. A. HERBOTH,
MICHAEL M. CROTTY,
By JOSEPH WHELESS, *Their Att'y.* [SEAL.]
LEE W. GRANT. [SEAL.]
AMERICAN BONDING AND TRUST COMPANY OF BALTIMORE CITY,
By THOS. C. HENNINGS, *Its Att'y-in-fact.* [SEAL.

Approved by—
JNO. F. PHILIPS,
*U. S. Dist. Judge.*

Endorsed: "Bond, $500.00. Filed Nov. 7, 1899. T. L. Crawford, clerk."

29 And afterwards, at the said September term, A. D. 1899, of said court, to wit, on the 23rd day of November, A. D. 1899, and within thirty days after the granting of said appeal, there was filed in said cause a certificate as to the jurisdictional question, duly signed on said day by the judge; which said certificate of jurisdictional question is hereto attached and transmitted as a part of the record in this case:

30 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, September Term, 1899.

JOSEPH WHELESS ET AL.
*vs.*
CITY OF ST. LOUIS ET AL. } No. 4234. In Equity.

*Certificate of Jurisdictional Question.*

I, Elmer B. Adams, United States district judge within and for the aforesaid district, do hereby certify that the above-entitled cause came on to be heard by the court at, to wit, the September, 1899, term of the court, upon the application for a temporary injunction, as prayed in the bill, it being alleged in said bill that complainants are severally the owners of certain and nearly all the lots of land abutting on Whittier street between Washington boulevard and Finney avenue, in the city of St. Louis; that the defendant city, acting under the provisions of its charter and ordinances, had entered into a contract with the defendant paving company to improve said street in front of complainants' property, and said company was engaged in doing the work, which was a public improvement; that the cost of making said improvement is, according to the terms of said charter, ordinance, and contract, a charge upon complainants' abutting property, and is about to be levied and assessed against it as a special tax, according to the frontage of said lots on said street, and special tax bills are about to be issued separately against each lot of complainants, which would be liens upon their said property and subject the same to being sold to satisfy said special assessment; which assessment and levy, it is averred, are in violation of com-
31 plainants' rights under the Federal Constitution. Wherefore an injunction was prayed to restrain said city from levying and assessing the cost of said public improvement against complainants' property and from issuing special tax bills against them for the same, and for a decree declaring said charter, ordinance, and contract provisions void; that the cost of said improvement, which was about to be assessed and levied against all the abutting property, is largely in excess of the sum of $10,000.

Defendants filed a plea to the jurisdiction of the court, supported by an affidavit showing that the amount of special tax which would be assessed and levied against the property of any one of the complainants severally would not exceed $1,400 and would not be an amount equal to $2,000, and that hence the matter in dispute between the

parties was not of the sum or value necessary to give jurisdiction to the circuit court of the United States, and that the bill should be dismissed for want of jurisdiction.

Complainants demurred to the said plea and submitted the question of jurisdiction thus raised to the determination of the court, and thereupon the court, after due hearing and consideration, did overrule said demurrer, the court being of the opinion, as set out in the written opinion filed in said cause and accompanying this appeal, that the court was without jurisdiction of said cause in respect of the sum or value in dispute, and upon complainants confessing the matter of the plea in point of fact and refusing to plead further, their said bill was by the court dismissed for want of jurisdiction.

Now, therefore, it is certified that the question of the jurisdiction of the circuit court arising on the pleadings in this case is, 1st, Is the sum or value in dispute, and hence the amount necessary to confer jurisdiction on this court, the total cost of the public improvement which it is sought to levy and assess against the abutting property of all the complainants as a whole and which exceeds $2,000,
32 or is such jurisdictional amount determined by the amount which any of the complainants severally would be required to pay and which is less than $2,000, it appearing also in this case that no such assessment or levy has yet been made by the city? and 2nd, Can complainants join their several assessments so as to make up an amount in excess of $2,000, and thus be within the jurisdiction of the court?

And it is further certified that the foregoing question of jurisdiction was the sole question involved at the hearing of said cause and upon which said cause was dismissed and the final decree entered and is the question upon which alone the appeal herein is, in open court at the September term, 1899, prayed and allowed and hereby certified to the Supreme Court of the United States.

ELMER B. ADAMS, *Judge.*

November 23, 1899.

32½ [Endorsed:] No. 4234. United States circuit court, eastern division of the eastern judicial district of Missouri. Joseph Wheless *et al.* against City of St. Louis *et al.* Certificate of jurisdictional question. Filed Nov. 23, 1899. T. L. Crawford, clerk.

33 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

JOSEPH WHELESS ET AL., Complainants,
*vs.*
THE CITY OF ST. LOUIS ET AL., Defendants. } No. 4234.

Joseph Wheless and Lee W. Grant, solicitors for complainants; B. Schnurmacher, C. Claflin Allen, and Kehr & Tittman, solicitors for defendants.

*Opinion of the Court.*

October 11, 1899.

ADAMS, *District Judge:*

This is a bill to restrain the city of St. Louis and the president of the board of public improvements of said city from making an assessment and levying the same against the property abutting on Whittier street between Washington avenue and Finney avenue to pay the cost and expense of paving that part of Whittier street.

It is alleged that the defendants are proceeding to improve that part of the street under and pursuant to the provisions of the charter of the city, an ordinance passed by the municipal assembly of the city, and a contract made between the city and the defendant The Gilsonite Roofing and Paving Company, whereby assessments are contemplated and intended to be made against abutting
34 property, not according to the benefits which the property receives as a result of the improvements, but in the arbitrary proportion which the linear feet of each lot fronting or bordering on the improvement bears to the total number of linear feet so bordering thereon; that under the provisions of said charter, ordinance, and contract the complainants' property bordering on the street is made subject to a tax or charge without due process of law and in violation of the 14th amendment of the Constitution of the United States. There are several complainants in this case, each owning separate lots abutting said street, but none of them liable to be assessed for an amount equal to $2,000, the minimum jurisdictional amount of this court in such cases.

The amounts which the property of all the complainants are liable to be assessed, according to the averments of the bill, aggregated together, largely exceed $2,000.

There is no showing by the bill that any of the complainants own or are interested in any of the other lots, except that which it is averred he himself owns. In other words, the bill shows that the complainants have several interests, each according to his ownership of the property abutting the improvements, and in no sense a joint interest in all the lots.

The question is whether this court has jurisdiction to hear and determine this controversy.

This question has received the consideration of the Supreme Court of the United States in many cases, and as a result of them all the following proposition may be considered as settled: "If several persons be joined in a suit in equity * * * and have a common and undivided interest, though separable as between themselves, the amount of their joint claim or liability will be the test of
35 jurisdiction; but where their interests are distinct and they are joined for the sake of convenience only, and because they form a class of parties whose rights or liabilities arise out of the same transaction, * * * such distinct demands or liabilities cannot be aggregated together for the purpose of giving this court jurisdic-

tion." * * * Clay *vs.* Field, 138 U. S., 464, and cases there cited.

Cases in which parties may aggregate their demands for jurisdictional purposes are illustrated by Shields *vs.* Thomas, 17 How., 3, and other cases referred to in the leading case of Gibson *vs.* Shufeldt, 122 U. S., 27. The other class of cases in which complainants are not allowed to aggregate their demands for jurisdictional purposes are illustrated by *Ex parte* Baltimore and Ohio Railroad, 106 U. S., 5, and a large number of cases therein referred to, and also by cases cited and commented upon in Gibson *vs.* Shufeldt, *supra.* It does not seem necessary to discuss or distinguish between these many cases. It will be found that they enforce the distinction already pointed out. The question, therefore, now before the court for determination is to which class does the case now under consideration belong.

In my opinion, it clearly belongs to the class last mentioned. It is a case in which many parties may be proper, but not necessary. The whole relief, to which all claim to be entitled, could as well be secured at the suit of any one of them. In other words, the controversy is several in its nature, in its object, and in its result. The right to be protected is several and individual. The wrong to be redressed is personal and not collective in any sense. The matter in controversy between complainant Wheless and the city of
36 St. Louis is one which concerns Wheless alone, and the right of the city of St. Louis to take his property and the right to the tax which it might impose is in no manner dependent upon whether the city proceeds against any one or more of the complainants in this case. It may be and undoubtedly is true that some of the facts available to Wheless may also be available to complainant Barnhart. In other words, that their rights or liabilities arise out of the same transaction or the same alleged unlawful action threatened to be taken by the defendants, and that their rights may be affected by the same facts, but these circumstances do not entitle them to aggregate their demands for jurisdictional purposes. Clay *vs.* Field, *supra.*

In reaching a conclusion with regard to the correct principles to be applied in this case, I have been very materially aided by the fact that the Supreme Court of the United States has in the case of *Ex parte* Baltimore and Ohio Railroad Company, *supra*, and in the case of Gibson *vs.* Shufeldt, *supra*, critically considered all of the many cases before that time passed upon by them relating to this subject, and in recurring to the opinions in these two cases it is found that the cases of Shields *vs.* Thomas, 17 Howard, 3; Market Company *vs.* Hoffman, 101 U. S., 112; The Connemara, 103 U. S., 754; The Mamie, 105 U. S., 573, upon which complainants' counsel rely, have been judicially determined to have no application to cases like the present. They are all classified by the Supreme Court as belonging to the cases where the controversies are about matters in which the several complainants were interested collectively under a common title, and for that reason proper cases for the aggregation of claims on the part of numerous complainants in order to make up the juris-

dictional amount. It is also found that the cases last referred
37 to as relied upon by complainants' counsel are distinguished from the other class of cases in which the cause of action grows out of the same transaction merely, involving no common title or undivided interest, such as Seaver *vs.* Bigelow, 5 Wall, 208; Paving Company *vs.* Mulford, 100 U. S., 147, and Russell *vs.* Stansell, 105 U. S., 303, so that if any particular expressions are found in any of the first-mentioned series of cases, which might be seized upon as seeming authority for the contention of the complainants, it must be borne in mind that all those cases have been classified by the Supreme Court as belonging to a class not like that before the court. In this connection, and for the same purpose, see also Henderson *vs.* Wadsworth, 115 U. S., 264.

Although I do not think it necessary, as already stated, to separately consider the great array of cases bearing on this subject, there are two or three of them which seem to me to be so entirely opposite to the facts in the case under consideration that I deem it best to refer to them somewhat more particularly.

In the case of Hawley *vs.* Fairbank, 108 U. S., 543, several persons who were owners of bonds of the town of Amboy, Illinois, united as relators in an application to the circuit court of the United States for a mandamus requiring the county clerk to compute and assess upon all the taxable property in said town a sufficient sum to pay the judgments obtained by the relators. One of the relators had a demand in excess of the jurisdictional amount; none of the others had a demand equal to the required jurisdictional amount. The trial court awarded a writ of mandamus directed to the county
38 clerk, commanding him to extend upon the tax collector's book of the town a sufficient sum to pay each of the several judgments held by the relators. To reverse that judgment a writ of error was taken to the Supreme Court of the United States.

The court say: "We are met at the outset with a motion of the defendants in error to dismiss the writ in this case on the ground that the several judgments proceeded upon below cannot be united to give jurisdiction." The court sustained the motion as to all except one, who had an amount which was sufficient, and remarked as follows: "In the present case distinct causes of action in favor of distinct parties were united for convenience and to save expense in one suit, and distinct orders were made in favor of each one of the several judgment creditors."

It seems to me that the same argument which is made by counsel for the complainants in this case, if sound, would have applied to that case. In that case, it is true, there was not an attempt to enjoin the collection of taxes, but there was an attempt to enforce the collection of a tax. So far as the town of Amboy was concerned, it was one tax which was sought to be enforced. Just as in the case now before the court, so far as the city of St. Louis is concerned, it is one tax that is sought to be enjoined, and if the total of the tax sought to be collected in the Hawley case was not considered in determining the jurisdiction of the court, it is not apparent how the whole

amount of the tax sought to be enjoined in the case at bar can be considered in determining the jurisdiction.

In the case of Russell *vs.* Stansell, 105 U. S., 303, the controversy arose over the action of Stansell in securing from the levee board of Mississippi, district No. 1, an assessment of taxes for the collection of a judgment before that time obtained by Stansell
39 against the levee board. It was claimed that the proceedings resulting in the assessment were illegal and unjust, and certain individuals who were assessed in small amounts underneath the jurisdiction of the court brought a bill to enjoin the further proceedings on the part of the board for the collection of the tax. It appeared in that case, as in this, that no single individual among all the parties complainant could in any event be made liable for an amount equal to the jurisdictional amount required for an appeal. On the presentation of the petition the court granted a preliminary injunction, but on final hearing the injunction was dissolved and the petition dismissed. From the last order an appeal was taken to the Supreme Court of the United States. The appellee Stansell moved to dismiss because the amount in dispute between him and any one of the several persons charged with the payment of the assessment is less than $5,000, the jurisdictional amount of the Supreme Court of the United States. The court in its opinion in that case say: "While the appellants, and those whom they have chosen to represent, are all interested in the question on which their liability to the appellee depends, they are separately charged with the several amounts assessed against them; there is no joint responsibility resting upon them as a body. The proceeding on his (Stansell's) part was to require each of the several land-owners of the levee district to pay his separate share of the debt that had been established against the district. The recovery was against each owner separately. While the appellants were permitted, for convenience and to save expense, to unite in a position setting forth the grievances of which complaint was made, their object was to relieve each separate owner from the amount which he personally or his property was found to be accountable. An injunction, if granted, would
40 necessarily prevent the appellee from collecting from each owner the amount for which he was separately liable. It is clear that under the rulings in Paving Company *vs.* Mulford, 100 U. S., 147; Seavers *vs.* Bigelows, 5 Wall., 208; Rich *vs.* Lambert, 12 Howard, 347; Stratton *vs.* Jarvis, 8 Pet., 4, and Oliver *vs.* Alexander, 6 Pet., 143, such distinct and separate interests cannot be united for the purpose of making up the amount necessary to give us jurisdiction on appeal."

It is clear, and seems to have been so conceded by counsel on the argument of this case, that the principles governing the right of an appeal to the Supreme Court of the United States, in so far as the amount is concerned requisite to confer jurisdiction upon the Supreme Court of the United States in such appeal, are the same as those involved in considering the amount requisite to give jurisdiction to this court in an original proceeding. Such being the case the authority of Russell *vs.* Stansell, *supra*, seems to be entirely ap-

plicable and controlling here. In the case now under consideration several persons unite in a petition just as they did in the Russell case, setting forth the grievances of which they complain. The object in this case, as it was in that, is to relieve each separate owner from the amount — which he personally or his property may be found accountable, and inasmuch as it appears that no one of the complainants is liable, or can be made liable, by the proceeding against which they complain, in an amount equal to $2,000, this court, following the doctrine of the Supreme Court, has no jurisdiction and can afford no relief.

It was suggested in argument that a different rule is applicable to a case where no assessment has been in fact made from that which is applicable to a case where an assessment has already been made like the Russell case. I am not able to appreciate the force of this distinction.

41 In either of such cases the purpose sought to be accomplished is to declare the proceedings about to be taken or which have been taken to enforce a payment of certain taxes illegal and unwarranted in the law, and in my opinion it makes no difference in the applicatory principles whether the defendants have taken one of the initial steps towards consummating the alleged illegal act of subjecting complainants' property to an unlawful charge, or whether they have taken none of them, but are threatening and intending so to do.

Counsel for complainants rely specially upon the cases of Davies *vs.* Corbin, 112 U. S., 36, and Brown *vs.* Trousdale, 138 U. S., 389.

Concerning the first of these cases it appears that the chief justice, who wrote the opinion, in reaching a conclusion found and held that all the relators claim under one and the same title, namely, the levy of taxes already made expressly for their benefit, and therefore that they, and each and all of the relators, have a common interest in the tax, and inasmuch as it was immaterial to the collector whether he paid it to one or another of the complainants, the chief justice properly classifies this case with those of Shields *vs.* Thomas, *supra*, and other cases in which aggregation of claims may be made for jurisdictional purposes. In the other of the cases so relied upon, the chief justice in delivering the opinion of the court, properly states that the main question at issue was the validity of the bonds, and that involved the levy and collection of taxes for a series of years to pay the interest thereon, and finally the principal thereof, and not the mere restraining of a tax for a single year, and for this reason holds that the rule applicable to complainants each claiming under a separate and distinct right in respect to a

42 separate and distinct liability, contested by the adverse party, is not applicable to that case.

As a result of all the cases, and especially by the authority of the cases of Hawley *vs.* Fairbanks, *supra*, and Russell *vs.* Stansell, *supra*, I am of the opinion that the court has no jurisdiction in the present case.

It results from this holding that the demurrer to the plea to the jurisdiction of the respondents must be overruled.

43 UNITED STATES OF AMERICA, *Eastern Division of the Eastern Judicial District of Missouri,* } *ss:*

I, T. L. Crawford, clerk of the circuit court of the United States in and for the eastern division of the eastern judicial district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the pleadings and proceedings in case No. 4234 of Joseph Wheless *et al.*, complainants, against The City of St. Louis *et al.*, defendants, as fully as the same remain on file and of record in said case in my office, and that the certificate hereto attached is the original certificate of jurisdictional question, signed by the judge.

Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District, Missouri.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in the eastern division of said district, this 23rd day of November, in the year of our Lord eighteen hundred and ninety-nine.

T. L. CRAWFORD,
*Clerk of said Court,*
By JOHN J. CONWAY, *Deputy.*

[Ten-cent U. S. internal-revenue stamp, canceled 11, 23, '99. T. L. C.]

[Endorsed:] No. 4234. United States circuit court, eastern division of the eastern judicial district of Missouri. Joseph Wheless *et al.* against The City of St. Louis *et al.* Duly certified transcript of the pleadings and proceedings in the above-entitled cause.

Endorsed on cover: File No., 17,576. E. Missouri C. C. U. S. Term No., 161. Joseph Wheless, William M. Reed, Halstead Burnet *et al.*, appellants, *vs.* The City of St. Louis *et al.* Filed November 28th, 1899.

Office Supreme Court, U.S.
FILED
DEC 17 1900
JAMES H. McKENNEY,
Clerk

No. 161.

Brief of Meriwether for Appts.

Filed Dec. 17, 1900.

IN THE

# Supreme Court of the United States.

*OCTOBER TERM, 1900.*

**No. 161.**

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| JOSEPH WHELESS et al., Appellants, vs. CITY OF ST. LOUIS et al., Appellees. | } | No. 17,576. |

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

## APPELLANTS' STATEMENT, BRIEF AND ARGUMENT.

JOSEPH WHELESS,
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IN THE

# Supreme Court of the United States.

*OCTOBER TERM, 1900.*

**No. 161.**

**JOSEPH WHELESS et al.,**
**Appellants,**
**vs.**
**CITY OF ST. LOUIS et al.,**
**Appellees.**
**No. 17,576.**

## STATEMENT OF THE CASE.

This appeal comes up on a certificate of jurisdictional question. The single question presented is that of the jurisdiction of the Circuit Court, in respect of the "sum or value" of the "matter in dispute."

Complainants, suing for themselves and all others in like interest, seek to enjoin the defendants from charging the cost of a public street improvement, in excess, under the terms of the contract between the defendant city and the construction company, of $10,000, as a special tax against the abutting property of complainants, and from assessing and levying the same on their said property, and from issuing special tax bills in payment of the same; on the ground that the provisions of the Charter and ordinance, authorizing such charge and assessment, and the contract in pursuance thereof,

are unconstitutional and illegal. And they pray a decree annulling these provisions of the Charter, ordinance and contract.

The Charter of the City of St. Louis, in its Article VI. "Of Public Improvements," provides that the *cost* of paving streets, alleys and sidewalks, and of the materials of the same, *shall be charged upon the adjoining property as a special tax*, and collected from the owners of the same. This cost is to be computed, upon the completion of the work, by the president of the Board of Public Improvements, and is to be assessed and levied by him as a special tax against the abutting property, according to the "front foot" method of assessment. Special tax bills are then to be issued and delivered to the contractor in payment of the work; which tax bills shall be first and prior liens against the abutting property, and the same may be enforced in any court of competent jurisdiction. (Trans., pp. 2 and 3.)

The Municipal Assembly of the City of St. Louis, on February 1, 1899, passed "An Ordinance for the Improvement of Whittier street between Washington boulevard and Finney avenue." (Trans., p. 3,) The city thereupon entered into a contract with the defendant Gilsonite Roofing and Paving Company, for doing the work of street improvement, at an estimated cost in excess of $10,000.00. (Trans., p. 4.)

The complainants in this case are the owners of practically all the property abutting this improvement on Whittier street, between Washington Boulevard and Finney avenue; and they file this bill in behalf of themselves and all others interested in the "matter in dispute."

The bill sets out the several provisions of the Charter, ordinance and contract in regard to the public improvement and the cost and manner of payment of the same, as stipulated in said contract; alleges the doing of the work by the defendant company;

and that the defendant, McMath, President of the Board of Public Improvements, "will and is about to levy and assess the costs of the said improvement in an amount largely in excess of $10,000.00, as a special tax against the property of these complainants; and is about to, and will, unless restrained, make out, certify and deliver to the defendant company, in payment of said work, special tax bills against the property of these complainants, which will constitute a first and prior lien on their said several lots respectively."

The bill avers that the aforesaid provisions of said Charter, ordinance and contract, are illegal and void as being repugnant to the Constitution of the United States, and in violation of Articles V and XIV of the amendments thereto, in that they and the threatened acts of the defendants in accordance with them, deny to complainants the due process of law, and subject their private property to being taken for public uses without compensation.

The writ of injunction is then prayed, "directed to the said several defendants, enjoining the said City of St. Louis and President of the Board of Public Improvements of said City, from levying or assessing the cost and expense of the said improvement of Whittier street against the property thereon abutting of these complainants, and those for whose use the suit is brought, and from issuing, or attempting to issue, special tax bills against these complainants or their property, or from otherwise creating liens or incumbrances against their said property or causing a cloud on the title thereto.

"And that the said defendant, the Gilsonite Roofing and Paving Company, its successors and assigns, be enjoined from demanding and receiving any such special tax bills against the property of these complainants, and from proceeding in any wise to create or enforce a lien on complainants' property by reason of said work or payment therefor, or from in any wise attempting to subject complainants or their property to

the payment of the costs and expenses of said work or any part thereof.

"And that the court, by its decree, declare the provisions of the foregoing Charter, Ordinance and contract, in so far as they pretended to impose the costs of said public improvement on these complainants or their property, to be illegal, unconstitutional and void, and without force or effect whatever to that end." (Trans., pp. 7 and 8.)

The bill thus seeks to enjoin as one whole and on behalf of all the parties concerned, the assessment and levy of the entire cost of the public improvement as a special tax and lien on all the property affected, and to declare void the contract, ordinance and charter provisions under which it was threatened to be assessed and levied, in an amount in excess of $10,000.00, the estimated cost of the public improvement under the contract between the City and the Gilsonite Co.

But the defendants, by a plea to the jurisdiction, denied the jurisdiction of the court in the premises, (Trans., p 11) for the alleged reason that no one of the parties complainant would be required to pay a special tax bill of so much as $2,000.00, and that, therefore, this is not a case "where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of $2,000.00," within the meaning of the Act of Congress prescribing the jurisdiction of the United States Circuit Court. The demurrer of complainants to this plea was overruled, (Trans., p. 15) and complainants refusing to plead further, the court rendered a decree dismissing the bill for want of jurisdiction. (Trans., p. 16.) From this decree complainants in open court appealed and the question of jurisdiction was duly certified to this court by the Circuit Judge. (Trans., pp. 19 and 20.)

Complainants ask the decree to be reversed and the cause to be remanded for hearing on its equities.

SPECIFICATION OF ERRORS.

1st. The court erred in overruling the demurrer to the plea to the jurisdiction of the court.

2d. The court erred in dismissing the bill for want of jurisdiction.

3d. The court erred in holding that it had no jurisdiction of the bill, because the amount of special tax which might be assessed against any one of the complainants severally would not exceed the sum or value of $2,000.

4th. The court erred in holding that the entire amount of the special tax to be assessed and levied under the ordinance and contract as the cost of the improvement of Whittier street, viz., over $10,000, was not the matter in dispute and within the jurisdiction of the court.

## BRIEF.

I.

(*A.*) The "matter in dispute," in a suit in equity, is the whole object sought by the decree.

(*B.* The value of that object is the "sum or value" of the "matter in dispute."

(*a.*) In this case, the "matter in dispute" is *the right of the City of St. Louis to "charge the cost"* of a public improvement *"as a special tax against the adjoining property,"* and to *levy and assess the same* against complainants' property; which right the city asserts and complainants deny, and pray injunction against its exercise.

(*b.*) The "sum or value" involved in this suit is *the cost of the public improvement*, which the city asserts the right to so charge as a special tax, assess and levy, in amount over $10,000; which amount defendants would lose by a decree for complainants.

So say the courts:

*"The matter in dispute between the parties is that which is asserted on one side and denied on the other."*

Gibson vs. Shufeldt, 122 U. S. 27.

"By 'matter in dispute' *is meant the subject of litigation—the matter for which the suit is brought—and upon which issue is joined*, and in relation to which jurors are called and witnesses examined. The damages, or *prayer for judgment, must be regarded.*"

Lee vs. Watson, 68 U. S. 337.

*"In a suit for an injunction the amount in dispute is the value of the object to be gained by the injunction."*

Foster's Federal Practice, Sec. 16.

"The whole of the relief sought is the matter in dispute."

Handley vs. Stutz, 137 U. S. 366.

Estes vs. Gunter, 121 U. S. 183.

Washington Market Co. vs. Hoffman, 101 U. S. 112.

Overby vs Gordon, 12 Sup. Ct. Rep. 603.

"The main question at issue (in a suit to enjoin the *levy of a tax*) was the *validity of the bonds* • • • The amount in dispute, *in view of the main controversy*, far exceeds our jurisdiction."

Brown vs. Trousdale, 138 U. S. 389.

"The *value of the matter in dispute is measured by the whole tax*, and not by the separate parts into which it is to be divided when collected."

Davies vs. Corbin, 112 U. S. 36.

"The matter in controversy was the sum due the complainants collectively, not the particular sum to which each was entitled when the amount due was distributed among them."

Shields vs. Thomas, 58 U. S. 3.

"The Connemara," 103 U. S. 754.

"The Mamie," 105 U. S. 773.

Trust Co. vs. Waterman, 106 U. S. 65.

Some concrete cases of the application of this principle, showing that the *object of the suit* is the "matter in dispute," follows:

"The character of the nuisance (in a suit to abate a bridge as a public nuisance, where it was objected that the damages sustained by the plaintiff were not sufficient to give the court jurisdiction) and the sufficiency of the damage sustained are to be judged by the courts; but the want of a sufficient amount of damage having been sustained to give the court jurisdiction will not defeat the remedy, as *the removal of the obstruction is the matter in controversy, and the value of the object must govern.*"

Railroad Co. vs. Ward, 2 Black, U. S. 485.

And so, in a suit by a railway company to restrain a shipper from prosecuting a multiplicity of suits for overcharge in freight, the *maintenance of the rate* under

which the charges were made *is the real object of dispute.* The court say:

"In a suit for an injunction, the amount in dispute is the value of the object to be gained by the bill.

"An injunction may be of much greater value to the complainant than the amount in controversy in cases of dispute which have already arisen."

Railway Company vs. Kuteman (C. C. A.), 54 Fed. Rep. 547.
Symonds vs. Greene, 28 Fed. Rep. 34.
Whitman vs. Hubbell, 30 Fed Rep. 81.
Smith vs. Bivens, 56 Rep. 352.
Herbert vs. Rainey, 54 Fed. Rep. 248.
Clapp vs. City of Spokane, 53 Fed. Rep. 515.
Dickinson vs. Union B. & Tr. Co. 64 Fed. Rep. 895.

In Whitman vs. Hubbell (30 Fed. Rep. 81) a suit was brought to restrain the maintenance of an awning over a street. In overruling an objection to the jurisdiction, the court said:

"The matter in dispute is the value of the right to maintain the awning, not the amount of damage done by it to plaintiff."

In Symonds vs. Greene (28 Fed. Rep. 834), which was a suit to restrain the infringement of a trade-mark, the court said:

"There would be difficulty in maintaining the jurisdiction if the profits to be recovered were the measure of the orators' rights involved; but that is not so understood. An injunction may be of much greater value to the orator than any amount he may show himself entitled to."

In Oleson vs. Railway Co., (44 Fed. 1), it was held that:

"Where the object of a suit is to restrain the use of property by a person other than the owner, the right to use the property is the matter in dispute, and the value of such right must determine the question of jurisdiction."

"In a suit to enjoin a nuisance in the erection of coke-ovens, it was held that, if the amount of damage which would accrue to the plaintiff was not sufficient to give the court jurisdiction, the court would, nevertheless, have jurisdiction if the value of the prohibited erection equalled the jurisdictional amount."

Rainey vs. Herbert, 5 C. C. A. 183.

"In a suit to set aside conveyances of land as fraudulent, and a cloud upon complainant's title, the value of the matter in dispute is the value of the land."

Simon vs. House, 46 Fed. Rep. 317.

"In an action where the property attached upon a claim of less than $2,000, exceeded the value of $2,000, the amount in controversy was the value of the property attached."

Hoover & Allen Co. vs. Columbia Co., 68 Fed. 945.

"The Circuit Court has jurisdiction of a bill by a telegraph company to enjoin a state auditor from collecting state alleged illegal taxes, and from certifying to the county clerks the proportion of local taxes to be collected in each county, where the amount claimed to be due the state and the aggregate amount of such local taxes each exceeds $2,000."

Telegraph Company vs. Norman, 77 Fed. 13.

"In a suit to quiet title it is not the value of defendant's claim that constitutes the amount in controversy. It is the value of the whole of the real estate to which the claim extends."

Woodside vs. Ciceroni, 35 C. C. A. 177.

In a suit by a railroad to enjoin several ticket brokers from selling railroad tickets, the Court said:

"The amount or value of the matter in controversy is not the damage that might be specifically recovered in a suit upon any one or more of these contracts, but is the protection furnished to the plaintiffs and the loss prevented. It is the value of the whole object of the suit to the complainant which determines the amount in controversy."

Nashville C. & St. L. Ry. Co. vs. McConnell, 82 Fed. Rep. 65.

"The defendant insists that the Court is without jurisdiction, because the amount in controversy does not exceed $2,000; that is to say, that the amount which the complainant would have to pay for license to conduct his business does not amount to that sum. Jurisdiction is not determined in that way. *Jurisdiction is determined by the value of the right to be protected, or the extent of the injury to be prevented by the injunction.*"

Humes vs. City of Ft. Smith, 93 Fed. Rep. 857.

II.

In cases where several parties are joined in one suit seeking a common remedy, or contesting a like liability, the test of jurisdiction is whether the interest or liability of each is separate and distinct, or whether they have a common and mutual interest in the whole of the relief sought, joint as against the party opposed, though may be unequal or separable among themselves.

"The rulings of this Court are uniform and consistent to the effect that, where several plaintiffs claim under the *same title*, and the determination of the cause necessarily *involves the validity* of that title, this court has jurisdiction, *though the individual claims of none of them exceed the requisite amount*; but when the *matters in dispute* are *separate and distinct*, and are joined in one suit for convenience or economy, the case will be dismissed."

Davis vs. Schwartz, 155 U. S. 455.
N. O. Pac. Ry. Co. vs. Parker, 143 U. S. 42.
Gibson vs. Shufeldt, 122 U. S. 27.

"The general principle observed in all these cases is that if several persons be joined in a suit in equity or admiralty and have a *common and undivided interest, though separable as between themselves, the amount of their joint claim or liability will be the test of jurisdiction.*"

Clay vs. Field, 138 U. S. 464.
Davies vs. Corbin, 112 U. S. 36.
Cases cited, *supra.*

III.

If the whole relief sought is one and entire against the party opposed, and he has no interest or concern in any ultimate separability or distribution of benefit among the parties joined, he can not object to the jurisdiction that, as between themselves, the "matter in dispute" is separable. As to him, it is one.

"The complainants had a common and undivided interest in the claim, and it was *perfectly immaterial to the appellant how it was to be shared among them.* He had no controversy with either of them on that point; and if there was any difficulty as to the proportions in which they were to share, the dispute was between themselves, and not with him."

Shields vs. Thomas, 58 U. S. 3.
"The Connemara," 103 U. S. 754.
Freeman vs. Dawson, 110 U. S. 264.
Handley vs. Stutz, 137 U. S. 366.
Davies vs. Corbin, 112 U. S. 36.
Overby vs. Gordon, 12 Sup. Ct. Rep. 603.

IV.

It is the direct and immediate relief sought, the present object of the decree, and not any mediate or collateral relief, or incidental effect or result of the decree, which is the object of suit, and determines the jurisdiction.

"It is well settled that our appellate jurisdiction, *when dependent upon the sum or value really in dispute* between the parties, is to be tested *without regard to the collateral effect* of the judgment in another suit. No matter that it may appear that the judgment would be conclusive in a subsequent action, *and is the direct effect of the judgment which can alone be considered.*"

Washington & Georgetown Ry. Co. vs. District of Columbia, 146 U. S. 227.
New England Mort. S. Co. vs. Gay, 145 U. S. 123.
Clay Center vs. Farmers' L. & T. Co., 145 U.S. 224.
Gibson vs. Shufeldt, 122 U. S. 27, and cases cited.

## ARGUMENT.

The bill avers that the President of the Board of Public Improvements "is about to compute the cost of the improvement of Whittier street, and assess and levy the same in an amount exceeding $10,000, as a special tax and lien on complainants' property." The prayer is that he be enjoined from so doing, and the provisions of law and contract under which he assumes to act be decreed void.

The Charter of the City of St. Louis provides in its Sec. 18 of Art. VI.: "The costs of construction * * * shall be charged upon the adjoining property as a special tax."

The ordinance, No. 19,681, for the improvement of Whittier street, provides, in its Sec. 4: "The costs * * * shall be charged as a lien upon the property fronting or bordering upon the improvement herein provided for."

It is thus seen that the theory of the bill is that a single bill of cost, incurred under a single contract, in amount exceeding $10,000, is sought to be charged as a tax on the property abutting on the improvement on Whittier street between Washington and Finney avenues, and that the law under which this tax is imposed is in violation of complainants' rights of property under the Federal Constitution; and the relief sought is to prohibit the charging of such cost against complainants' property as a whole, and to declare the law unconstitutional.

The Charter and ordinance contemplate one singular and entire charge for the whole work, as stipulated in the contract; and the construction company has a lien upon the whole of the adjoining property chargeable therewith. This lien is inchoate in the law itself; it

begins its period of gestation with the passing of the ordinance and letting of the contract; it is, during all the time of the prosecution of the contract work, an inchoate and impending charge and lien upon the whole of the abutting property, necessary to be taken into consideration in any proposed transfer of property or in any certificate of title; and is all this time a cloud upon the title of the property; and it becomes merely perfected upon the completion of the work and the act of charging the contract cost upon the abutting land as a special tax; and the subsequent levy and assessment of the same upon particular lots and the issue of separate tax bills but serves to complete and administer the purpose of the law, to "*charge the cost as a special tax against the property.*"

The bill thus anticipates the threatened acts—the computation and charging of the cost against complainants' property, the assessing and levying of the same as a special tax, and the imposition of the lien of the same. This had not been done; the tax not yet levied; no apportionment of the special tax made; no individual liability created against this or that property owner; all was *in fieri*. The interest of all the complainants was one and the same; they sought to resist the charge of the cost against them altogether, or the levy of any tax at all, or the creation of any lien, on their property as a whole. They sought to declare void the provisions of law under which the contract, *in invitum* as to them, was made; which imposed the threatened liability as a whole, common to them all. They sought to declare void the contract which imposes a $10,000 illegal cost charge upon them generally and their property as a whole.

If the injunction should be granted, it would enjoin, not the enforcing of any individual liability fixed upon any or all of them separately, but the charging of the cost and the assessing and levying of a $10,000 tax in its entirety, and its imposition as a

whole against all the property abutting the improvement, from Washington boulevard to Finney avenue. It would enjoin the apportionment of the assessment upon the several lots, and the issuance of individual tax bills, by which process alone a separate and distinct liability on complainants severally could be created.

The decree would prevent, not myself, nor Barnhart, nor Shinnick, nor any individual property owner (except incidentally), from having to pay some part of the cost of the improvement which might thereafter be apportioned to him severally, but would prevent the City of St. Louis from shifting the entire cost of the improvement, over $10,000 under the contract, from itself and charging it as a whole illegally upon all the complainants. The decree would declare void the contract of the defendant Gilsonite Co., and cause it a loss of $10,000 by denying it a right under the contract to have the cost of the public work charged and assessed as a whole against the property abutting on the line of improvement.

It is thus clear that the "matter in dispute" is the right of the defendant city, under the charter, ordinance and contract in question, to charge and assess the cost of Whittier street as a $10,000 special tax against the adjoining property, and the right of the defendant company to demand and receive the benefit of the same, on the one hand; and on the other, the right of the complainants to resist the arbitrary and illegal charge and assessment. The "sum or value of the matter in dispute" is the $10,000 which the defendants would lose (as against complainants) as the result of decree for complainants, and which could not be charged or assessed at all by the granting of the relief prayed in their bill.

The interest of the complainants is common and entire. There is nothing about it, in any valid sense, which makes it "separate and distinct," and such as

"cannot be joined, for the sake of convenience or economy, so as to make up the jurisdictional amount." Complainants "join" nothing; there is no "separate and distinct liability;" for the simple reason that there is *no* liability separated or apportioned to any of them, and as matter of fact, no liability at all (except *in posse*), and cannot be, under the charter itself, until the doing of the very act which it is the object of the bill to enjoin—that is, the charging and assessing of the cost of the work as a whole as a tax. And this is not done. Complainants do not attempt to "make up the jurisdictional amount;" it is fixed by the contract, $10,000, which they all seek to defeat.

There is one law, one ordinance and one contract, and one item of costs contracted; and this is one charge and lien against all the abutting property, as one whole. The relief sought is one, to declare this one threatened tax charge, exceeding $10,000, illegal, and to prevent its levy and assessment, by one act of assessing and levy, as a whole. The solidarity of the object of the bill is most apparent.

The right of complainants to maintain their bill within the jurisdiction of the Federal Courts is affirmed by the authority of many analogous cases cited in my brief, as well as by the reasoning and authority of all the cases cited in opposition. All these cases fall fairly into two classes; which may be best distinguished in the language of this court. "The true distinction," says Mr. Justice Brown (in N. O. Pac. R. R. Co. vs. Parker, 143 U. S. 42), "is between cases where there are several plaintiffs interested collectively under a common title, and those wherein the matters in dispute are separate and distinct, and are joined in one suit for convenience or economy." And the cases which properly come within either classification are reviewed by this court in Gibson vs. Shufeldt (122 U. S. 27). The first class is "when several persons join, in equity or in admiralty, in one suit to assert *several and distinct in-*

*terests, and those interests alone are in dispute*, the amount of the interest of each is the limit of the appellate jurisdiction." But of the other class the court say:

"When suit is brought by two or more plaintiffs, or against two or more defendants, or to recover or charge property owned or held by different persons (which more often happens under the flexible and comprehensive forms of proceeding in equity and admiralty than under the stricter rules of the common law) the question—what is the matter in dispute—becomes more difficult. Generally speaking, however, it may be said that the joinder in one suit of several plaintiffs or defendants, who might have sued or been sued in separate actions, does not enlarge the appellate jurisdiction; that when property or money is claimed by several persons suing together, the test is whether they claim it under one common right, *the adverse party having no interest in its apportionment or distribution among them, or claim it under separate and distinct rights, each of which is contested by the adverse party;* that when two persons are suing or two parcels of property are sought to be recovered or charged, by one person in one suit, the test is whether the defendant's alleged liability to the plaintiff, or claim to the property, is joint or several; and that, so far as affected by any such joinder, the right of appeal is mutual, because *the matter in dispute between the parties is that which is asserted on the one side and denied on the other.* * * * *In equity, as in admiralty, when the sum sued for is one in which the plaintiffs have a joint and common interest, and the defendant has nothing to do with its distribution among them, the whole sum sued for is the test of the jurisdiction.*"

The distinction made between the two classes of cases is thus clearly indicated by the court (in Davis vs. Schwartz, 155 U. S. 455):

"The rulings of this court are uniform and consistent to the effect that, where several plaintiffs claim under the *same title*, and the *determination* of the cause *necessarily involves the validity* of that title, this court has jurisdiction, *though the individual claims of none of them exceed the requisite amount;* but when the matters in dispute are separate

and distinct, and are joined in one suit for convenience and economy, the case will be dismissed as to claims not exceeding five thousand dollars."

It is to this first class of cases that appellees so insist that the case at bar belongs. They cite all the cases to be found in the reports which hold that such a "joining of interests" is not permissible. But if the court will examine and analyze them, they may dispose of them in the language already used by this court in disposing of these same cases:

"In all the cases where we have held that several sums decreed in favor of or against different persons could not be united to give us jurisdiction on appeal, it will be found that the matters in dispute were entirely separate and distinct, and were joined in one suit for convenience and to save expense. (Citing and distinguishing cases.) Here, however, the matter in controversy was the amount due the salvors collectively, and not the particular sum to which each was entitled when the amount was distributed among them." ("The Connemara," 103 U. S. 754).

I will pass them briefly in review, and show their inapplicability to the facts of this appeal before presenting the array of those cases of the other class which sustain the jurisdiction which we claim. Our case is within one or the other class; by showing that it is *not* within the category insisted upon by appellees, by logic and law it comes within the other class, and the court has jurisdiction.

Gibson vs. Shufeldt (*supra*) was a creditor's bill by a number of general creditors, having distinct claims, to set aside a deed of trust for the benefit of preferred creditors.

*Held:* "That distinct decrees against distinct parties on distinct causes of action, or on a single cause of action in which there are distinct liabilities, cannot be joined to give this court jurisdiction on appeal."

In Russell vs. Stansell (105 U. S. 303), an injunc-

tion was asked against the *collection of the assessment that had been made.* The amount with which the petitioners, as individuals, were separately charged was as follows: Russell, $7.58; Stovall, $205.14; Reid, $229.29.

The Court said: "They are separately charged with several amounts assessed against them. There is no joint responsibility resting on them as a body. The proceeding on the part of the appellee was to require each of the several land owners in the levy district to pay a separate share of the debt which had been established against the district. *The recovery was against each owner separately. The object was to relieve each separate owner from the amount for which he personally, or his property, was found to be accountable.* An injunction, if granted, would necessarily be to prevent the appellee from collecting from each owner the amount for which he was separately liable. * * * Such distinct and separate interests cannot be united for the purpose of making up the amount necessary to give us jurisdiction on appeal."

The case of El Paso Water Company vs. El Paso (152 U. S. 157) is not at all in point. It was a suit by the Water Company, to which the city had granted the exclusive right for fifteen years to supply water in the town, to enjoin the city from establishing other works until after the expiration of that period. *Held*, that as it did not appear affirmatively that the new water works were to go into operation until after the expiration of the fifteen years, and as it did not appear from the record that there was over five thousand dollars in controversy, the court had no jurisdiction.

Neither is Colvin vs. Jacksonville (158 U. S. 457) in point. It was a suit by a single non-resident to enjoin a certain issue of municipal bonds of one million dollars. The complainants' property in Jacksonville would not be liable for as much as two thousand dollars of tax on account of the bond issue. *Held*, that

the interest of this non-resident, and not the entire bond issue of the city, was the matter in dispute.

Neither is Davis vs. Schwartz (155 U. S. 631). This was a *bill by several creditors* of an insolvent to set aside four chattel mortgages. Separate and distinct decrees, one in favor of Kent for thirty-six hundred dollars, were rendered on their separate claims which were allowed, and an appeal was taken from all the decrees. A motion was made by Kent to dismiss the appeal from the allowance of his claim, upon the ground that the requisite amount is not involved to give jurisdiction to this court. *Held*, "that the different mortgages assailed in this suit were for several and separate interests."

The Court say: "It is true, the four mortgagees were made joint defendants to the bill, but in reality their interests were several. The mortgages were separate, and a several and distinct decree was made in favor of each for the payment of his demand. A separate bill would have lain against each mortgagee, but as certain of the questions involved were common to all the mortgages, they were, *as a matter of convenience*, all made parties to the same bill."

The case of Stewart vs. Dunham, (115 U. S. 151) is within that class of cases where interests sought to be joined are *several* and *distinct*. This was a *creditors' bill* to reach property of debtor fraudulently conveyed. There were decrees, separate and distinct, in favor of a number of the complainant creditors, their several recoveries being specifically set out, ranging from ten thousand dollars to seven hundred dollars. Defendant appealed. Motion to dismiss appeal as to some, because less than five thousand dollars involved. *Held*, "that on appeal from decree in creditors' bill, where judgments are *several*, they cannot be joined to give jurisdiction."

Schwed vs. Smith (106 U. S. 188) was a *creditors' bill by several creditors* having *separate* and *distinct judgments*, none of which were in excess of five thousand dollars. Appeal dismissed, "because they had

*separate* and *distinct* interests depending on *separate* and *distinct judgments.*"

Hawley vs. Fairbanks (108 U. S. 543) is also a case of *separate* and *distinct interests* joined. Several bond holders brought separate suits and obtained *separate* and *distinct judgments*, as set out in their bill, against the town. The several plaintiffs then joined in a suit for mandamus. *Held*, "that when *distinct* causes of action in favor of distinct parties are united in one suit, and *distinct judgments* are rendered for or against the several parties, their judgments cannot be joined to give us jurisdiction."

The case of New Orleans Pac. Ry. vs. Parker (142 U. S. 42) cited by defendants, is *strongly in point for complainants*, and they ask the Court's attention to the same as reported. It was a bill brought by Parker, "for himself and for all parties holding bonds and coupons similar to those herein set forth," to foreclose a railroad mortgage. Parker claimed only the amount of coupons matured upon two bonds. Subsequently one Hamlin, another bond holder, intervened. On trial two distinct decrees were rendered for plaintiffs, one in favor of Parker for twenty-four hundred dollars, and one for Hamlin for six thousand dollars. Defendants appealed. Parker moved "to dismiss appeal as to him upon the ground that less than five thousand dollars was involved."

(The Court's attention is respectfully called to the language of Mr. Justice Brown, on pages 50, 51 and 52, where this distinction is clearly stated.)

The Court will thus see that all the cases relied upon by defendants are clearly within a different class from the cases relied upon by complainants, and in which it is submitted that their case comes, as presenting a common cause of action for a common relief. ALL of defendants' cases, which they oppose to this jurisdiction, are *creditors' bills*, or other actions in which *sep-*

*arate* and *distinct* demands or liabilities are sought to be joined.

To the foregoing cases, relied upon by defendants, and none of which "touch" us, we oppose the whole array of the other class of cases, which do, in their own facts, and by analogy, sustain the jurisdiction of the Federal Court in the case at bar. "The general principle observed in all these cases is," as the Court said in Clay vs. Field (138 U. S. 464), "that if several persons be joined in a suit in equity or admiralty, and have a common and undivided interest, though separable as between themselves, the amount of their joint claim or liability will be the test of jurisdiction."

Among so many cases, fully and fairly in point of authority, in behalf of this jurisdiction, it may be that the one most alike in point of facts, as involving a tax injunction suit, is to be found in Brown vs. Trousdale (138 U. S. 389). There several hundred tax-payers of a county, for themselves and others associated with them, filed a bill averring the "levy of a tax to pay interest on bonds, by the county judge, and that the sheriff was about to proceed in the collection thereof, and made the sheriff and county judge parties defendant; and prayed an injunction against the sheriff from attempting to collect the particular tax, and against the county judge from making any order or further levy in the premises, and for a decree that the original bonds be declared invalid, and all holders thereof be perpetually enjoined from collecting the principal of the bonds and the interest thereon."

On the question of the jurisdiction of the Circuit Court, this court, speaking through Chief Justice Fuller, said:

"The main question at issue was the validity of the bonds, and that involved the levy and collection of taxes for a series of years, to pay the interest thereon and finally the principal thereof, and not the mere restraining of the tax for a single year. The grievance

complained of was common to all the plaintiffs and to all whom they professed to represent. The relief sought could not be legally injurious to any of the taxpayers of the county, as such, and the interest of those who did not join in or authorize the suit was identical with the interest of the plaintiffs. The rule, applicable to plaintiffs, each claiming under a separate and distinct right, in respect to a separate and distinct liability, and that contested by the adverse party, is not applicable here. For although, as to the tax levied for the particular year, the injunction sought might restrain only the amount levied against each, that order was but preliminary, and was not the main purpose of the bill, but only incidental. The amount in dispute, in view of the main controversy, far exceeded the limit upon our jurisdiction, and disposes of the objection of appellees in that regard."

In that case, as in this, "the main question at issue was the validity"—there, of the bonds; here, of the special assessment. There, the relief of the complainants from paying the particular tax levied against them individually, "was not the main purpose of the bill, but only incidental." Here, we seek to enjoin an entire cost charge and assessment and declare invalid the law authorizing its assessment. That is the "main purpose" of the bill. That we may escape paying what may thereafter be apportioned against each individual is "only incidental." And the possibility of this "incidental" relief cannot be considered here, and cannot affect the direct purpose of the suit. This has been frequently declared by the court. In a recent case (Washington & Georgetown Ry. Co. vs. District of Columbia, 146 U. S. 227,) the court say:

"The principle that the sum or value really in dispute between the parties in a case before this court, as shown by the whole record, is the test of its appellate jurisdiction, without regard to the collateral effect of the judgment in another suit between the same or other parties, has been repeatedly affirmed by this court. It is well settled that our appellate jurisdiction, when dependent upon the sum or value really in dispute

between the parties, is to be tested without regard to the collateral effect of the judgment in another suit between the same parties. No matter that it may appear that the judgment would be conclusive in a subsequent action—it is the direct effect of the judgment which can alone be considered."

It is, thus, all the more apparent that the "matter in dispute" is the charge and assessment of the special tax, as one whole, its validity and the constitutionality of the law authorizing it. It is the tax itself, the whole amount of it, which we resist, under a common interest to defeat it. A case strikingly in point is Davies vs. Corbin (112 U. S. 36). There, a number of county bondholders had recovered separate judgments against the county; they compelled, by mandamus, the levy of a tax to pay their judgments; the tax was levied, and then the collector refused to collect the tax. All the judgment-holders then joined in mandamus in the Circuit Court to compel the collector to collect the tax and pay their judgments, "the aggregate amount of which was much more than $5,000, but the amount due upon each is not stated." The Circuit Court granted the writ, and the collector appealed. Motion was made to dismiss the writ of error, "because, second, the value of the matter in dispute does not exceed $5,000, inasmuch as no one of the relators will be entitled to receive, of the tax collected, so much as $5,000, and no single taxpayer will be required to pay that amount of tax." But the court overruled the motion, holding that "*the value of the matter in dispute is measured by the whole amount of the tax, and not by the separate parts into which it is to be divided when collected.* It is conceded that the amount of the tax is more than $5,000."

Mr. Chief Justice Waite, speaking for the court, said:

"The second objection is, to our minds, equally untenable. The writ which has been ordered is not like that in Hawley vs. Fairbanks (108 U. S. 543), to compel the levy of taxes to pay separate and distinct

judgments in favor of several relators, who, for convenience and to save expense, united in one suit to enforce their respective rights, but to compel a tax collector to collect a single tax which has been levied for the joint benefit of all the relators, and in which they have a common and undivided interest. As in the cases of Shields vs. Thomas (58 U. S. 5), and "The Connemara" (103 U. S. 754), all the relators claim under one and the same title, to-wit: the levy of a tax which has been made for their benefit. They have a common interest in the tax, and it is perfectly immaterial to the tax collector how it is divided among them. * * * His duty is to collect the tax for the benefit of all alike. A payment of the judgment of one creditor would not relieve him from his obligation to collect the whole tax. The object of the proceedings is, *not to raise the sums due the relators*, but to raise the whole tax of ten mills on the dollar. As the matter stands, each relator has the right to have the whole tax collected for the purpose of distribution among all the creditors. It is apparent, therefore, that *the dispute is between the tax collector on one side and all the creditors on the other, as to his duty to collect the tax as a whole for division among them, after the collection is made, according to their several shares. The value of the matter in dispute is measured by the whole amount of the tax, and not by the separate parts into which it is to be divided when collected.* It is conceded that the amount of the tax collected is more than $5,000."

Thus it is made clear that he who runs may read—that it is the nature of the relief sought, the immediate matter at issue, that which "*is asserted on one side and denied on the other*," that is the "matter in dispute," and its value determines the jurisdiction. In this case, the issue is the converse of that in the Davies case, but the principle applies exactly. Here we all join to resist the levy of a tax, which we have a common and undivided interest, as against the party levying the tax, in resisting. It is perfectly immaterial to the tax assessor or the company collector how it is to be apportioned when levied, on this or that complainant's property. The assessment is of a whole tax of $10,000 on all the

land abutting the improvement, whether this be one tract owned by one man or a hundred lots separately owned. A payment of his portion of the assessment by one or more lot-owners would not prevent the levy of the tax as a whole. The object of this proceeding is, not to enjoin the collection of the portion of the assessment which may be due by any complainant, after tax bills issued, but to defeat the levy of the whole tax. It is apparent, therefore, that the dispute is between the city on the one side and the property owners on the other, as to the city's rights to assess the special tax as a whole, for apportionment against them severally, after the assessment is made, according to their several frontages on the street improved. The value of the matter in dispute is thus measured by the whole amount of the tax under the contract, $10,000, and not by the separate parts into which it is to be divided when assessed, levied and apportioned.

Other cases having the full sanction of this court very strongly support our contention. Shields vs. Thomas (58 U. S. 3) is regarded as a leading case of this class, probably the first case drawing the distinction. That case is fully in point, and is here cited in the language of the court:

"The representatives of John Goldsberry filed a bill against Shields, charging that he had converted to his own use a large amount of the property to which these representatives were entitled. In that proceeding they obtained a decree against him for a large sum of money; the shares of the respective claimants being apportioned to them in the decree; and the appellant was directed to pay to each the specific sum to which he was entitled, as his proportion of the property misappropriated by Shields.

"The appellant, Shields, lived in Iowa when this decree was made; and the present appellees, who are a portion of the representatives of John Goldsberry, united in the bill in equity now before us to enforce the decree of the Kentucky court; and praying that Shields might be compelled to pay to them respectively the several sums

decreed in their favor in the proceedings in Kentucky; and they obtained the decree in question according to the prayer of their bill.

"The whole amount recovered against Shields in the proceeding in Iowa exceeds $2,000. But the sum allotted to each representative who joined in the bill was less. And a motion is made to dismiss, upon the ground that the sum due to each complainant is severally and specifically decreed to him; and that the amount thus decreed is the sum in controversy between each representative and the appellant, and not the whole amount for which he has been held liable. And if this view of the matter in controversy be correct, the sum is undoubtedly below the jurisdiction of the Court, and the appeal must be dismissed.

"But the court thinks the matter in controversy in the Kentucky court was the sum due the representatives of the deceased collectively, and not the particular sum to which each was entitled, when the amount due was distributed among them according to the laws of the State. They all claimed under one and the same title. They had a common and undivided interest in the claim, and it was perfectly immaterial to the appellant, how it was to be shared among them. He had no controversy with either of them on that point; and if there was any difficulty as to the proportions in which they were to share, the dispute was between themselves, and not with him.

"It is like a contract with several to pay a sum of money. It may be that the money when recovered is to be divided between them in equal or unequal proportions. Yet, if the controversy arises on the contract, and the sum in dispute upon it exceeds $2,000.00, an appeal would clearly lie to this court, although the interest of each individual was less than that sum."

These cases need no comment or argument. *Res ipsa loquitur.* The further citation of authorities is but cumulative. But that no precedent may be wanting, I beg indulgence to accumulate them yet somewhat, as the learned counsel for the city seems to have quite overlooked them all in his researches.

The cases recognize, as in the nature of a test, whether the party against whom the seemingly several

interests are joined is affected by or interested in the ultimately severable interests, or in the proportion or distribution of the subject-matter of the suit. If the final apportionment is immaterial to the defendant, the demand against him is, as to him, one and entire, irrespective of any ultimate possible divisibility. This appears in the Shields vs. Thomas case, *supra*. The same principle, as a test, was recognized in the case of "The Connemara" (103 U. S. 754). Let the court state the case, and apply the rule:

"The suit below was by a set of salvors to recover for a single salvage service, and there was but one claim filed for the property saved.

"The total amount of the recovery was $14,198, but, in the division among the several parties entitled to share in the recovery, some got less than $5,000.00. Separate and distinct interests were not united in the suit. The service rendered was the joint service of all the salvors and the recovery was on that account. It was a matter of no consequence to the owners of the property saved how the money recovered was apportioned among those who had earned it. The owners were decreed to pay the salvors for what they, acting together in a common service, had done. In such a suit we think the owners cannot be deprived of their appeal because the court below, in the further progress of the cause, saw fit to apportion the recovery among the salvors according to their respective merits. The decree is, in legal effect, one decree in favor of all the salvors, they having, as between themselves, unequal interests."

So, too, in "The Mamie" (105 U. S. 773), and Trust Co. vs. Waterman (106 U. S. 65).

Freeman vs. Dawson (110 U. S. 264) was a bill to set aside a deed of trust. From a decree for complainants the defendant trustee appealed. The Court say:

"The appellee has moved to dismiss the appeal for want of a sufficient amount in controversy to sustain the jurisdiction of this court. The reason assigned for the motion is that, if appellant's position is maintained, no one of the creditors secured by the deed of trust

will receive so much as $5,000 out of the fund of $6,000 in court; but it is admitted that the whole amount of the debts secured by the deed of trust exceeds that sum. The *sole question at issue* on this appeal is the *legal title to the whole fund*, as between Dawson, the judgment creditor, on the one hand, and Freeman, the grantee in the deed of trust, on the other; and no question of payment to or distribution among the several *cestuis que trust* is presented. The motion to dismiss must therefore be overruled."

So in Handley vs. Stutz (137 U. S. 366), a case in which the *whole of the relief sought* was held to be the "matter in dispute," irrespective of any final distribution of interests. The Court thus states the case:

"This is a bill in equity by some, in behalf of all of the creditors of a corporation, against the corporation and holders of stock therein. Such a bill can only be maintained by one or more creditors in behalf of all, and not by any one creditor to secure payment of his own debt to the exclusion of others. * * * The contest is upon the sufficiency in amount of the creditors' claims to support the jurisdiction of the Circuit Court in the first instance, and of this Court on appeal, within the meaning of the statutes limiting the jurisdiction of each court to cases in which the sum in dispute exceeds $2,000 and $5,000, respectively. * * * The sums alleged to be due from the corporation to the original plaintiffs amounting to more than $2,000, the Circuit Court had jurisdiction of the case, and authority to administer and distribute the amounts due from the individual defendants to the corporation for unpaid subscription to a stock, as a trust fund for the benefit of all the creditors of the corporation. * * * The trust fund so administered and ordered to be distributed by the Circuit Court amounting to much more than $5,000, the appellate jurisdiction of this court is not affected by the fact that the amounts decreed to some of the creditors are less than that sum. It was immaterial to the appellants how the sums so decreed to be paid by them should be distributed."

So, in the case at bar, the ultimate apportionment of the tax upon complainants severally is wholly imma-

terial to the city which assesses and levies the tax as a whole, and to the construction company in whose favor the tax is levied and the lien created. The severalty of title and the final distribution of liability for payment, by the issuance of separate special tax bills against different lots of ground, is to them wholly a matter of indifference; it is merely an administrative measure. It is immaterial to them how the property is subdivided, or whether it is subdivided at all. It is entirely immaterial to the city, and to the company, whether a single tax bill is ultimately issued for the gross contract price, $10,000, as against all the abutting property as a whole, under one ownership, or whether separate tax bills are issued to correspond with whatever subdivisions or several ownerships of the abutting property subject to the charge and lien. This case is clearly within that principle of the law of jurisdiction, as established in the preceding cases, in which the parties resisting have a common interest in the subject matter of the litigation, and in which the adverse party is wholly unconcerned in the ultimate unequal separate interests of the parties among themselves, or in the distribution of the benefits (in this case relief from an illegal assessment) among the several complainants. As in Estes vs. Gunter (121 U. S. 183), which was a bill filed by a number of preferred creditors for an amount in excess of $5,000, under an assignment, to enjoin a sale of the property by attaching creditors, and to establish the assignment with its preferences, the court *held* that the value of the property, over $5,000, was the matter in dispute, and said:

"The decree is not that B. and M. be paid their debt, but that nothing be paid to the claimants. The distribution of the fund in court is to be made hereafter, as law and justice may require. The effect of what has been done (the decree) is to defeat the claim which E. and D. have set up in their bill; and, so far as it now appears, it matters not to them what

disposition is made of the assigned property. That can be determined hereafter, when the rights of other parties shall be presented in proper form."

Here the decree we seek is, not that the collection of tax bills against us severally be enjoined, but that no tax be charged or assessed, and, as an incident, no tax bills be issued.

A case upon which we greatly rely in sustaining this jurisdiction, in holding that *the ultimate loss or gain involved, as the immediate result of the decree*, is the "sum or value" of the "matter in dispute," is Washington Market Co. vs. Hoffman (101 U. S. 112). It is a case altogether in point and principle with this of ours. The nature of the case and the principle involved are best stated in the language of the court:

"This was a bill originally brought by James A. Hoffman against the Washington Market Company, seeking an injunction against the company proceeding to sell a stall in their market, occupied by him, and seeking also a decree establishing his right to retain possession of said stall so long as he chose to occupy it for his business as a butcher. Subsequently, the bill was amended, by consent, and 205 other occupants of other stalls in the market were made complainants with Hoffman. The relief then asked was an injunction in favor of each of the complainants, together with a decree establishing the right of each to the continued occupancy of his stall, so long as he might choose to occupy it for his business. * * *

"The question to be determined is whether the amount in controversy is sufficient to give us jurisdiction of the appeal. Upon this we have no doubt. While it may be true that if Hoffman was the sole complainant the amount in controversy would be insufficient to justify an appeal either by him or by the Market Company, the case is one of 206 complainants suing jointly; the decree is a single one in favor of them all, and in denial of the right claimed by the company, which is of far greater value than the sum which, by the Act of Congress, is the limit below which an appeal is not allowable. It is averred under oath in the pleadings that the sale which the company proposed to make and the

court below enjoins, would have realized to the Market Company more than $60,000. Of this benefit the decree deprives them. It is very plain, therefore, that the appeal is one within our jurisdiction."

The latest case in which this court has sustained its jurisdiction upon the principle which we invoke is Overby vs. Gordon (decided April 9th, 1900, No. 12 Supreme Court Reporter, 603). That was a suit to establish a will by the sole legatee, the next of kin being made parties defendant, as distributees claiming against the will. Decree was in favor of the proponent of the will, and the distributees took writ of error. Motion was made in this court to dismiss the writ, "because the interests of the plaintiffs in error in respect of the judgment to which said writ of error is directed are several, and the matter in dispute, exclusive of costs, as to no one of the said plaintiffs in error, exceeds the sum or value of $5,000."

"What, then," asks Mr. Justice White, on behalf of the unanimous Court, "was the matter in dispute in this controversy? The answer manifestly is, that it was whether an estate valued at more than $9,000 should pass in the mode provided in an alleged last will and testament, which, in effect, excluded the next of kin of the decedent from the enjoyment of the principal of the estate, or in the mode provided by the law of the domicil of the decedent for the transmission of an intestate estate. On the one hand was Mrs. Gordon, a sister of the deceased, and representing the interests under the alleged last will, asserting the validity of that document, and opposed to her were the plaintiffs in error, some of the next of kin of the deceased, interested in establishing his intestacy. Had the trial court admitted in evidence the transcript of record from the De Kalb Court, and given it the conclusive force contended for, it would seem beyond question that as to those interested in upholding the validity of the alleged will, the value of the estate affected by that instrument would have been the matter in dispute. The matter in dispute necessarily must be the same as to the unsuccessful next of kin who are prosecuting this writ of error, and the amount of whose several interests

in the estate of the decendent was not a question litigated below. The case is analogous in principle to that of Shields vs. Thomas. In that case it was held that where the representatives of a deceased intestate recovered a judgment against an administrator for an amount in excess of the sum necessary to confer jurisdiction to review, and such recovery was had under the *same* title and for a common and undivided interest, this court had jurisdiction, although the amount decreed to be distributed to each representative was less than the jurisdictional sum. In the case at bar, the contestants below sought, not an allotment to them of their interests, if any, in the estate, but an adjudication that the alleged last will and testament possessed no validity, and that contention was advanced by virtue of a claim of common title in the next of kin of the decedent to the *corpus* of the estate, such title, if any, being derived from the law of the alleged domicil of the deceased. In this aspect, the amount of the estate was the matter in dispute. New Orleans P. R. Co. vs. Parker, 143 U. S. 42, 51, 52, and cases there cited. There is therefore no merit in the objection to the exercise of jurisdiction."

This is "the conclusion of the whole matter." By a cumulation of authority, and on the most luminous principle, the facts of the case at bar bring it within the jurisdiction of the Circuit Court of the United States. The special tax had not yet been assessed or levied; it was an entity *in posse* under the ordinance and contract; the "matter in dispute" over which this contest wages is the right to give it being *de facto;* its sum or value is fixed by the contract, $10,000. No separate liability exists or is in issue; no distinct interest is involved.

In Russell vs. Stansell (*supra*) the tax bills had been issued, and it was sought to enjoin the collection of the bills. Not so here. Circumstances alter cases. It is so recognized by this court in a late case, curiously analogous of this.

In Fishback vs. W. U. Telegraph Co. (161 U. S. 96) a bill was filed by the Telegraph Company against

the Railroad Commission of Arkansas, and 47 clerks of different counties, to enjoin the collection of taxes assessed by the commission against the company. The commission had already assessed the taxes and apportioned them to the different counties, and the county clerks were about to enforce their collection. The amount of tax apportioned to no one county exceeded the jurisdictional amount. The court *held*, that under this state of facts the bill could not be maintained, as the amount of taxes due in each county was a separate and distinct liability and could not be joined to make up the jurisdictional amount.

But it was suggested to the court that the case be tried as though the assessment *had not yet been made*, and the commissioners *be enjoined from making the assessment*. But the court said:

"Without intimating in any degree under what circumstances, if at all, such a bill might lie, we may add that jurisdiction cannot be sustained here on the ground that, as the railroad commissioners were parties defendant, this bill might be treated, though they had already acted, as seeking to *restrain the making of the assessment as a whole*."

The court thus recognizes the distinction which exists, and which we invoke with confidence in this case; that famous difference of "before and after taking," and tacitly or by obvious implication hold that, *before assessment and levy and apportionment*, the whole tax resisted and sought to be enjoined, would be the "matter in dispute."

Complainants respectfully and earnestly submit that they are fairly within the principle which entitles them to unite their joint and mutual interests in seeking a common remedy, namely, the enjoining of an illegal tax and the annulling of the prejudicial law. It is a threatened assessment and levy to the total cost as a charge against all the abutting property which it is sought to enjoin. If such assessment is illegal, it is

illegal in its entirety. If the special tax as provided in the charter is unconstitutional, it is unconstitutional *ab initio* and *in toto*. The fact that when the assessment is made, if it be permitted to be made, the tax may be apportioned among individuals, is immaterial to the defendants and cannot be availed of as a defense to this action. Complainants, if entitled to relief, are entitled to be relieved of the whole illegal assessment and to nullify an obnoxious law. This is the relief sought; this the "matter in dispute," and it is within the jurisdiction of the Federal Court of equity.

Respectfully submitted,

JOSEPH WHELESS,
MINOR MERIWETHER,

*Counsel for Appellants.*

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No. 161.

Off. of Schnurmacher, Allen & C

Office Supreme Court U. S.
FILED
JAN 14 1901
JAMES H. McKENNEY,
Clerk.

Kehr for Appellees.

# In the Supreme Court of the United States.

OCTOBER TERM, 1900.

Filed Jan. 14, 1901.

JOSEPH WHELESS *et al.*,
*Appellants,*
*vs.*
THE CITY OF ST. LOUIS *et al.*,
*Appellees.*
No. 161.

## STATEMENT, BRIEF AND ARGUMENT FOR APPELLEES.

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EDWARD C. KEHR,
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19022

# In the Supreme Court of the United States.

OCTOBER TERM, 1900.

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JOSEPH WHELESS *et al.*,
*Appellants,*
*vs.*
THE CITY OF ST. LOUIS *et al.*,
*Appellees.*
No. 161.

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## STATEMENT.

This is an appeal by complainants from a decree of the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, dismissing for want of jurisdiction, their bill to enjoin the City of St. Louis and the President of its Board of Public Improvements from levying certain local assessments against the respective lots of land of the several complainants for the cost of improving a public street whereon said lots abut, and to enjoin the Gilsonite Roofing & Paving Co., from

demanding or receiving from the city any local assessment bills (or special tax bills, as they are known in Missouri), against the property of complainants.

The controversy arises upon the following state of facts:

On February 1, 1899, there was approved an ordinance of the City of St. Louis, theretofore duly enacted, known as Ordinance 19681, whereby the Board of Public Improvements of the City, which is charged with the performance of such duties, was directed to cause Whittier street, a public highway of the City, to be improved with a vitrified brick pavement from Washington boulevard to Finney avenue. In accordance with certain provisions of the City charter, the ordinance, in section 4 thereof, directed the President of the Board, upon the completion of the work, to compute the cost thereof, and thereupon to make an assessment as a special tax against each lot of ground fronting or bordering upon the improvement, for such proportion of the cost as the linear front feet of each such lot should bear to the total number of linear feet of the entire improvement. The President of the Board was directed by the same section to make out and certify to the City Comptroller, for the use of the contractor doing the work, bills of such assessments, as required by law; and under the St. Louis charter these bills, which constitute a lien against the various lots described therein, and are enforceable by suit in any court of competent jurisdiction, constitute the payment, and the only payment, to which the contractor is entitled.

The Board in due manner let the contract for the work in question to the defendant, the Gilsonite Roofing & Paving Co., and that Company, in compliance with the contract, duly executed the work. Thereupon the President of the Board of Public Improvements, in the discharge of his duty, computed the cost of the work,

and, as charged in the bill of complaint, was about to levy the same, by way of local assessments against the various lots abutting the improvement, when complainants, owners of a number of such lots, filed the bill in this case, for themselves and in behalf of all others who might be in like situation with them.

The bill charges substantially that the manner in which these assessments are made is violative of the Constitution of the United States, in that complainants are denied the due process of law, and that their private property is sought to be taken for public use without just compensation. In effect the purpose of the complainants is to attack the validity of the front foot rule of apportioning the cost of street improvements.

It is alleged in the bill that complainant, Thomas B. Chambers, is a non-resident of Missouri, and a citizen and resident of Ohio, and that the property of complainant, William R. Barnhart, will be imposed with an assessment in excess of two thousand dollars. It is not averred that the property of any other complainant will be affected to a similar extent.

It also appears in the bill that the aggregate amount of all of the assessments against all of the lots of land belonging to complainants and others, will be in excess of ten thousand dollars.

The bill was filed on October 3, 1899.

On October 7, 1899, defendants, The City of St. Louis and Robert E. McMath, President of the Board of Public Improvements, appeared and filed their joint plea to the jurisdiction of the court; their plea setting forth, among other reasons, why the court was without jurisdiction, the following:

"Second. That there is not any matter in dispute between the defendants, or any of them, and any one of the complainants in said bill, which matter exceeds, ex-

clusive of interest and costs, the sum or value of two thousand dollars."

"Fourth. These defendants specifically deny that the proportion of special assessment which is threatened to be levied against the abutting lots of one of the complainants, to wit, William R. Barnhart, is in excess of two thousand dollars, as set forth in said bill of complaint; and these defendants respectfully show unto your Honor that the allegation concerning the amount of assessment against the lot of complainant, Barnhart, is the only allegation in said bill of complaint showing, or tending to show, that the amount in dispute between any one of the complainants and the defendants exceeds the sum of two thousand dollars; and these defendants allege the facts to be that the assessments which would be levied upon the lots belonging to the said complainant, Barnhart, by reason of the improvement of Whittier street, set forth in the bill of complaint, in the aggregate amount to far less than the sum of two thousand dollars, and do not and will not exceed the sum of fourteen hundred dollars."

"Fifth. It appears upon the face of the bill of complaint that the several complainants are and will be charged separately with the amounts to be assessed against them for the improvement of Whittier street. Therefore the amounts assessed against the several complainants cannot be added together in order to give the court jurisdiction. Since the matters in dispute are separate and distinct, and no one exceeds in value the sum of two thousand dollars, they cannot be joined in one suit for convenience or economy, or for any other reason, so as to give this court jurisdiction."

This plea was supported by affidavit filed with it, from which affidavit, it being that of the Street Commissioner of the City of St. Louis, it appears that the two lots of complainant William R. Barnhart, would be as-

sessed respectively in the amounts of six hundred dollars and seven hundred and eighty dollars, making an aggregate against both lots of thirteen hundred and eighty dollars; and further, that no property of any one complainant to the bill would be assessed in an amount equal to fourteen hundred dollars.

On October 11, 1899, complainants filed their demurrer to the plea to the jurisdiction, assigning in their demurrer that the facts set out in the plea are not inconsistent with the jurisdiction of the court, and do not constitute a sufficient plea to its jurisdiction. This demurrer was argued and overruled.

On October 26, 1899, the parties again appeared, by their respective solicitors, and complainants declined to plead further. *They expressly admitted the truth of the averments contained in the plea to the jurisdiction*, and thereupon, on such admission and refusal to plead over, the court entered a decree sustaining the plea to the jurisdiction and dismissing the bill. (See printed transcript, page 16.)

Thereafter assignments of error were duly filed by complainants, and they were allowed an appeal to this court. The certificate as to the jurisdictional question is to be found on page 19 of the printed transcript.

The only question, therefore, which is presented to this court, is whether the lower court possessed jurisdiction of the cause; and this depends on whether the separate assessments against the separate lots of land of the various complainants could properly be added together for the purpose of conferring such jurisdiction, or whether each was bound to stand or fall by itself.

## BRIEF.

### I.

The mere fact that a question is involved, arising under the constitution or laws of the United States, is not sufficient to give jurisdiction to a Circuit Court of the United States; the matter in dispute must also involve an amount exceeding two thousand dollars, exclusive of interest and costs.

Act of August 13, 1888 (Stat. at L. 433, Ch. 866);
Holt v. Indiana Manufacturing Co., 176 U. S. 68;
United States v. Sayward, 160 U. S. 493.

### II.

Nor will the mere fact of diverse citizenship of one complainant confer such jurisdiction.

Hooe v. Jamieson, 166 U. S. 395, and cases cited.

### III.

Under the charter of St. Louis and Ordinance 19681, authorizing and directing the improvement in question, the cost thereof was required to be imposed against the several lots of ground adjoining the improvement, and deemed to be benefited thereby, in the proportion that the frontage of each lot might bear to the total frontage of the work. This, as construed by the Missouri courts of last resort, means *a separate and distinct assessment against each lot.*

Fowler v. St. Joseph, 37 Mo. 228;
St. Louis v. Clemens, 49 Mo. 532;
Kemper v. King, 11 Mo. App. 116.

And even though contiguous lots belong to one owner, they must be separately assessed and not included in one bill or certificate.

Miller v. Anheuser, 4 Mo. App. 436.

And a local assessment, or a special tax bill (as it is called in Missouri), embracing a charge against two contiguous lots, is void, though the title to both be in the same person.

Kemper v. King, *supra*.

Therefore, since the various lots of land liable for the assessments in this case are owned in severalty, and no one complainant is interested jointly or in common in the lot of any other, and no one complainant is concerned in or can be affected by an assessment or lien against any lot but his own; and since it was confessed by complainants that the assessment against no one lot would amount to two thousand dollars, the court below was without jurisdiction, and properly so ruled; for, while it is well settled that where a number of complainants join, who claim under the same title, and have a common interest, the test of jurisdiction will be the aggregate of their interests (Gibson v. Shufeldt, 122 U. S. 27; Market Co. v. Hoffman, 101 U. S. 112), yet it is equally well settled that where the interests are distinct and they are joined for convenience only, and because they form a class of parties whose rights or liabilities arise out of the same transaction, or because they have some relation to a common fund or mass of property sought to be administered, the distinct demands or liabilities cannot be united for the purpose of giving jurisdiction, but each must stand or fall by itself alone.

Oliver v. Alexander, 4 Pet. 143;
Rich v. Lambert, 12 How. 352;
Seaver v. Bigelow, 5 Wall. 208;

Russell v. Stansell, 15 Otto (105 U. S.) 303;
Gibson v. Shufeldt, 122 U. S. 27;
Clay v. Field, 138 U. S. 464;
Davis v. Schwartz, 155 U. S. 631;
Colvin v. Jacksonville, 158 U. S. 456;
Fishback v. Western Union Telegraph Co., 161 U. S. 96;
Cannon v. Citizens Bank, 164 U. S. 319;
Ogden City v. Armstrong, 168 U. S. 224;
Sioux Falls National Bank v. Swenson, 48 Fed. 621;
Holt v. Bergevin, 60 Fed. 1;
Putney v. Whitmire, 66 Fed. 385;
Busey v. Smith, 67 Fed. 13;
Smithson v. Hubbell, 81 Fed. 593.

"The *distinct and separate interests* of claimants *in a suit for relief against assessments* cannot be united for the purpose of making up the amount necessary to give this court jurisdiction on appeal."

Ogden City v. Armstrong, *supra* (168 U. S. 224), *directly in point.*

"While the appellants were permitted, for convenience and to save expense, to unite in a petition setting forth the grievances of which complaint was made, their object was *to relieve each separate owner* from the amount for which he personally, or his property, was found to be accountable. An injunction, if granted, would necessarily be to prevent the appellee from collecting *from each owner* the amount for which he was *separately* liable. It is clear under the rulings that * * * such distinct and separate interests cannot be united for the purpose of making up the amount necessary to give us jurisdiction."

*Russell v. Stansell*, 15 Otto (105 U. S.) 303.

## ARGUMENT.

The controversy between counsel in this case is not so much over the law as over the question of its proper application to the particular facts of this case.

For appellees it is readily conceded that where a number of complainants, all claiming under the same title, and all having a common interest in the relief sought, join in one bill, the matter in dispute consists of their united interests.

In *Clay v. Field*, 138 U. S. 464, a general statement of the rule was made in an opinion prepared by Mr. Justice Bradley, in these words:

"The general principle observed in all cases is that if several persons be joined in a suit in equity or admiralty, *and have a common and undivided interest*, though separable as between themselves, the amount of their *joint* claim or liability will be the test of jurisdiction; but where their interests are *distinct* and they are joined for the sake of *convenience only*, and because they form a class of parties whose rights or liabilities arose out of the same transaction or have relation to a common fund or mass of property sought to be administered, such *distinct* demands or liabilities cannot be aggregated together for the purpose of giving this court jurisdiction by appeal, and each must stand or fall by itself alone."

Counsel for complainants have collected, and in their brief have discussed many of the cases of this court in which it was held that the test of jurisdiction was the total or aggregate amount of the interests of the various complainants. Nevertheless, in each of these cases the court very distinctly declared that such a test would not be applied where the rights or interests were independent and separate, and where the union or joinder of complainants was merely for the sake of convenience, to

avoid multiplicity of suits, or to save costs; and that cases of that nature would fall within the classification where the test is not the aggregate amount of all the claims, but where jurisdiction will only result if the pecuniary amount of the individual claim equals or exceeds the amount fixed by the judiciary acts.

Without undertaking to review the cases cited and brought forward by complainants in detail, it may fairly be said that they fall within one or the other of several groups illustrating the general rule of a *common and undivided* title or interest; for example, a bill to foreclose a mortgage, as was the case in *New Orleans Pacific Ry. Co. v. Parker,* 143 U. S. 42, where the bill was filed by one bondholder for himself and all other bondholders, and where, moreover, the mortgage contained an express provision that any bondholder might so proceed in lieu of the trustee; the question in such case being *the right to foreclose the mortgage,* independent of the amount due any particular complainant; proceedings to enforce a judgment or money decree, although the same may be in favor of several, each of whom on division among themselves would be interested in an amount less than that required for jurisdictional purposes, the matter in controversy in such case being *the single and common judgment* (*Shields v. Thomas,* 17 How. 3); or on a *question of priority,* as between judgment creditors, based on mechanic's liens, and the beneficiaries in a deed of trust covering the property affected by the liens, although none of the beneficiaries might be interested to an amount equalling five thousand dollars, the question in such case being not the amount due, but whether the instrument, *as one instrument,* should be held superior to the liens (*Freeman v. Dawson,* 110 U. S. 264); or where a number of salvors filed a single claim *for a single salvage service,* the controversy there being whether the service was rendered, and its value, and not how

that value was to be shared among the salvors (*The Connemara,* 13 Otto 754); in the case of a will contest where the question is *will or no will,* and where the jurisdiction of course is determined by the amount of the estate which would pass by the will if valid, or by the intestacy laws if invalid, and not by the amount which would pass to any one of the beneficiaries under the will, or the next of kin under the law (*Overby v. Gordon,* 177 U. S. 214); suits to enforce the liability of stockholders for unpaid stock subscriptions amounting in the aggregate to more than the jurisdictional amount, the controversy being *the liability* and not the amount due by any particular stockholder (*Handley v. Stutz,* 137 U. S. 366).

Without stopping, we repeat, to consider each single case cited by complainants, the foregoing may be taken as illustrating the proposition announced and the rule laid down in all of them. But the cases are equally clear, and the rule is equally well settled, that where the matter in controversy is not one in which the parties complainant have a *united or undivided* interest, there jurisdiction will result only in favor of or against those as between whom the controversy exceeds the jurisdictional amount, and that the several interests cannot be added together for that purpose.

This rule, we have said, is recognized in the very cases cited by complainants. For example, in the leading case of *Shields v. Thomas,* 17 How. 3, the representatives of a deceased person brought suit to enforce a decree in excess of the amount necessary to give this court jurisdiction on appeal, against one charged with a conversion of a part of the estate. The court held that the matter in controversy or the amount in dispute was not the proportion which might be due the several complainants on a division of the estate, but *the amount of the decree* sought to be enforced. The court nevertheless

recognized the rule for which we contend, and distinguished the case before it from *Oliver v. Alexander,* 4 Pet. 143, where a crew of seamen, for the sake of convenience and to save costs, were allowed to join in a suit for wages, and where it was said that the right of each seaman was separate and distinct from his associates; and from the case of *Rich v. Lambert,* 12 How. 352, where several shippers who owned goods which had been damaged, but who had no common interest in the goods, were allowed to join on the same theory, for convenience, but where it was also held that the interests of each were separate and distinct, and that jurisdiction on appeal could not obtain by uniting their several demands.

That the same test applies in determining whether the Circuit Court of the United States has original jurisdiction, as is applied in determining whether this court has jurisdiction on appeal, is settled by *Walter v. Railroad Co.,* 147 U. S. 373, where it was said:

"It is well settled in this court that when two or more complainants having several interests, unite for the convenience of litigation in a single suit, it can only be sustained in the court of original jurisdiction, or on appeal to this court, as to those whose claims exceed the jurisdictional amount."

On the other hand, there are many cases of this court in which the rule has been applied to particular facts, that separate and distinct claims or interests cannot be aggregated in order to give jurisdiction, and to some of these we briefly refer.

*Davis v. Schwartz,* 155 U. S. 631, was a suit to set aside as in fraud of creditors, several mortgages to different persons, the validity of each mortgage depending upon considerations of its own; it was held in that case that the jurisdiction of this court on appeal depended on the amount involved in each mortgage, and not on the

aggregate of the several mortgages involved in the litigation.

In *Colvin v. Jacksonville*, 158 U. S. 456, the complainant sought to enjoin the City of Jacksonville, Florida, from issuing certain municipal bonds, amounting together to one million dollars. His bill averred that as the owner of property in the city he would, by reason of such bond issue, be assessed with taxes exceeding two thousand dollars. This latter allegation was denied by the answer, and the court, upon hearing, found that, as a matter of fact, complainant would not be assessed in an amount equalling two thousand dollars, and dismissed the bill. Thereupon he appealed, and the action of the lower court was affirmed by this court, which ruled that "the amount of the interest of the complainant, *and not the entire issue of the bonds*, was the amount in controversy."

*Cannon v. Citizens Bank*, 164 U. S. 319, was a case where the bank sought to enjoin the collection of taxes by the sheriffs of several parishes in Louisiana, from which taxes the bank claimed to be exempt by virtue of its charter of incorporation. It was *held* that the amount of the taxes so sought to be affected could not be added together to give jurisdiction.

To the same effect is the case of

*Fishback v. Western Union Telegraph Co.*, 161 U. S. 96.

The case of *Russell v. Stansell*, 15 Otto (105 U. S.) 303, decided March 13, 1882, opinion by Mr. Chief Justice Waite, is directly in point, and of itself is decisive authority for the action of the Circuit Court in this case.

From the opinion in that case it appears that Stansell, who was the appellee, obtained a decree against a Levee Board of Mississippi for the payment to him of upwards of $70,000.00. This decree remaining unsatisfied, Stan-

sell instituted summary proceedings in the United States Circuit Court for the Northern District of Mississippi, under the terms and provisions of the statutes creating the board, to obtain an assessment against the lands in the district for the payment of his decree. In that proceeding, an order was made by the court, resulting in an assessment by commissioners appointed for that purpose; and the order provided that any person feeling aggrieved at the action of the commissioners might, by petition, present his grievance to the court for such redress as he might be entitled to. Under this order Russell and others, as individuals and as members of an executive committee, appointed at a mass-meeting of the owners of the lands in the district charged with the payment of the assessment, applied for an injunction against the collection thereof, claiming that the proceedings were illegal. It appears that none of the petitioners could in any event be made liable under the assessment for an amount exceeding twenty-five hundred dollars. But on the contrary, they were each assessed by reason of their ownership of lands in an amount far below that stated.

A preliminary injunction was granted on presentation of the petition, but on final hearing the same was dissolved and the proceeding was dismissed. Thereupon an appeal was taken to this court, which appellee, Stansell, moved to dismiss on the ground that the amount in dispute between him and any one of the several persons charged with the assessment was less than five thousand dollars.

We thus have presented substantially the question which is presented in the case at bar, where the aggregate of the assessments against the lands of the several complainants is in excess of the amount which was necessary to give the lower court jurisdiction, but the assessment against the land of any one complainant was

far below it. The motion to dismiss the appeal was granted in an opinion so concise and brief, and yet so thoroughly covering the proposition involved, that we cannot refrain from stating it in full.

"*This motion is granted.* While the appellants, and those whom they have been chosen to represent, are all interested in the question on which their liability to the appellee depends, they are *separately* charged with the *several amounts assessed against them.* There is no *joint* responsibility resting on them *as a body.* The proceeding on the part of the appellee was to require each of the several land owners in the levee district to pay his separate share of the debt that had been established against the district. *The recovery was against each owner separately.* While the appellants were permitted, for convenience and to save expense, to unite in a petition setting forth the grievances of which complaint was made, *their object was to relieve each separate owner from the amount from which he personally, or his property, was found to be accountable.* An injunction, if granted, would necessarily be to prevent the appellee from collecting *from each owner* the amount for which he was *separately liable.* It is clear that under the rulings in *Paving Co. v. Mulford*, 100 U. S. 148; *Seaver v. Bigelow*, 5 Wall. 208; *Rich v. Lambert*, 12 How. 347; *Stratton v. Jarvis*, 8 Pet. 4, and *Oliver v. Alexander*, 6 Pet. 143, such distinct and separate interests cannot be united for the purpose of making up the amount necessary to give us jurisdiction on appeal. Although the amount due the appellee from the levee district exceeds $5,000, *his claim on the several owners of property is only for the sum assessed against them respectively.* Any owner can relieve himself and his property from all further liability for the district by paying his part of the assessment."

In the subsequent case of *Gibson v. Shufeldt*, 122 U. S. 27, decided May 23, 1887, opinion by Mr. Justice Gray, all of the intermediate and the previous cases bearing on the rule, are carefully collected and classified for the reason stated in the opening sentence of the opinion, where it is said:

"The question presented by this motion can hardly be considered an open one; but the subject has been so often misunderstood that the court has thought it convenient to review the former decisions and the grounds on which they rest."

All of the antecedent cases are then marshalled in review, discussed and classified, thus bringing the work down to the year 1887, and reiterating and re-affirming the doctrine of *Russell v. Stansell.*

To attempt, in view of this opinion, to discuss the cases which are thus referred to, would be a work of supererogation and of no profit to counsel or the court. The reasoning of that case clearly assigns the case at bar to that classification of cases wherein the claims of the several parties cannot be united or aggregated for the purpose of conferring jurisdiction.

Probably the last expression of opinion by this court, in a case which may be said to be on all fours, and certainly directly in point, was made in the case of *Ogden City v. Armstrong*, 168 U. S. 224, opinion by Mr. Justice Shiras. In that case a number of property owners filed a bill against the City of Ogden, its Mayor and the members of its common council, to restrain the City and said officers from levying assessments upon the real property of the complainants, and all others similarly situated, for the cost of paving a portion of one of the streets of the city. The prayer of the bill was like the prayer of the bill here, for a decree declaring the ordinance under which the assessments were made, and the assessments, void, and to restrain defendants from pro-

ceeding thereunder. From a decree in favor of the complainants an appeal was taken by the City to the Supreme Court of the Territory, and on affirmance of the decree there, an appeal was taken and allowed to this court.

From the findings of facts, which are preserved in the opinion, the close similarity between that case and the case at bar are manifest. It appears that the property of no complainant would have been liable to be affected to an amount equal to $2,000, except the property of the Realty Company of Kittery, a Maine corporation, and one of the complainants in the case, whose property, under the ordinance complained of in the bill, was liable to be affected to an amount in excess of $7,000.00. No motion was made to dismiss the appeal, but it appears that upon the oral argument the suggestion was made that the court had no jurisdiction; thereupon the court, before passing to the merits of the controversy, considered that question first; and in so doing clearly and distinctly concluded that, "*the distinct and separate interests of claimants in a suit for relief against assessments cannot be united for the purpose of making up the amount necessary to give this court jurisdiction on appeal;*" but concludes that inasmuch as the Realty Company could have appealed from a decree adverse to it, that the defendant city might also appeal, because the matter in dispute between said complainant and defendants exceeded $5,000.00. That part of the opinion which relates to the question now before the court, is as follows:

"The first question to be determined is whether the amount in controversy is sufficient to give us jurisdiction of the appeal.

"Although no motion was made to dismiss the appeal, it was suggested at the argument that as it was not competent to make up the sum necessary to give this court

jurisdiction by uniting the several sums for which each taxpayer was liable, this was such a case, and that therefore we should dismiss the appeal.

"Undoubtedly, it is the well settled rule of this court that, in a suit in equity brought in the Circuit Court by two or more persons on several and distinct demands, the defendant can appeal to this court as to those plaintiffs only to each of whom more than $5,000 is decreed. *Russell v. Stansell,* 105 U. S. 303, was a case in its facts much like the present one. There land within a particular district was assessed for taxation, each owner being liable only for the amount wherewith he was separately charged; a bill of complaint was filed by a number of them, praying for an injunction against the collection of the assessment, and from a decree dismissing the bill an appeal was taken to this court. It was held that, while the complainants were permitted, for convenience and to save expense, to unite in a petition setting forth the grievances of which complaint was made, the object was to relieve each separate owner from the amount for which he personally, or his property, was found to be accountable, and that such distinct and separate interests could not be united for the purpose of making up the amount necessary to give this court jurisdiction on appeal.

"The same conclusion was reached in *Gibson v. Shufeldt,* 122 U. S. 27, where the previous cases were fully discussed.

"An examination of this record discloses that none of the complainants, save one, was assessed with an amount sufficient to have enabled him to bring the case here on appeal, and accordingly, under the doctrine of the cases cited, this appeal must be dismissed as to such parties.

"But it appears that the Realty Company of Kittery, a corporation of the State of Maine, a party complainant in the supplemental bill, had been assessed, under

the ordinance complained of, for the sum of $748.80 as an installment for one year, and had been compelled to pay the same, and that the City was threatening to continue said proceedings and to sell the real estate of said company annually for nine years, as each installment for a like sum became due. The liability of that company then, under the ordinance and assessment complained of, amounted to the sum of $7,488.00, and as that company could, had the decree of the court below been adverse to it, have brought the case here on appeal, so, upon the authorities above referred to, it is competent for the defendant City to do the same."

The Circuit Courts in the various districts have made a similar application of the rule announced by this court, and as indicating how they have understood its decisions, we refer also very briefly to a few of them as bearing upon this case.

The case of *Sioux Falls National Bank v. Swenson*, 48 Fed. 621, comes very close to the case at bar. In that case a bill was filed by the bank in its own behalf, and in behalf of its stockholders, for the purpose of enjoining the collection of certain taxes assessed against the bank and its shareholders for State, county and city purposes, the defendants being the County of Minnehaha, the City of Sioux Falls and the County Treasurer. In the bill it was claimed that the taxation was an attempted double taxation, and also that the assessment was illegal and void. The defendants contended that the court was without jurisdiction because it was not averred in the bill that the bank had in its possession or under its control any *undivided fund* in excess of $2,000, belonging to the stockholders, and which fund could be made liable for the payment of the taxes assessed against it and the shareholders; and that, therefore, there was "no claim asserted against the bank, or in which it may be said to be interested as trustee or otherwise, other or

different from the several claims based upon the taxes assessed against the bank in the name of its president and against the shareholders individually." It also appeared that no single assessment, whether against the bank or against the shareholders, amounted to as much as $2,000. Therefore, to reach that sum and to give jurisdiction, it would have been necessary to add the assessments against two or more of the parties together.

Many of the cases decided by this court, and to which reference has been herein made, are cited, and the following conclusion is then reached by Judge Shiras:

"The rule deducible from these authorities is, that jurisdiction is not conferred because a number of persons are interested in a given question, and the aggregate of the several claims may exceed the amount requisite for jurisdiction. The 'matter in dispute,' within the meaning of the statute, *is not the principle or rule of decision which is involved in the controversy, and which may be common to the interests of all the parties to the litigation, but it is the money value which is at stake;* and the claims of the several parties *cannot be added together* to form the matter in dispute, unless each party has an *undivided interest* in a claim to the property that is the subject of the litigation.

"In the case now before the court the bank and its shareholders are all interested in the questions involved in the legal proposition touching the validity or invalidity of the mode of assessment pursued, but the money interest they have in the litigation is separate and distinct. The tax assessed against the bank is separate and distinct from that assessed against the shareholders; and the tax assessed against one shareholder cannot be collected from another. If the tax collector should undertake to enforce the payment of the taxes complained of, he would proceed *against the property of each shareholder separ-*

*ately,* for the tax due from him alone. The bank and each of the shareholders could have commenced a separate action to restrain the collection of the tax assessed against each one, and in such case neither of the complainants would have had any money interest in the cases brought on behalf of the other shareholders. As the case now stands, the bank and its shareholders are interested alike *in the legal propositions* arising on the record, but there is *no common or undivided interest in any property,* nor in any fund, *nor in a tax assessed in a lump against property owned in common.* The assessment and tax is against each one *separately,* and the money interest each one has in the litigation is measured by the amount of the tax assessed against him individually. That is the extent of the money interest each one has in the suit, and the case, therefore, is one wherein, for convenience sake, and to save cost and expense, one suit may be brought to settle the rights of all; but the money claims involved are separate and distinct, and the amount thereof cannot be added together for the purpose of conferring jurisdiction upon this court. It is clear from the record that, had separate suits been brought by each shareholder for the purpose of cancelling the assessment complained of, none of them could have been maintained in this court, because none would have involved a sum exceeding $2,000; and, under the authorities cited, it is equally clear that, while the joinder of separate and distinct claims or rights of action may be permitted under proper circumstances, for convenience sake, and to prevent a multiplicity of suits, and to escape unnecessary costs, it is not permitted to add together the several and distinct money interests belonging to the litigants, in order to create a jurisdiction which does not otherwise exist. As it appears from the face of the record that none of the distinct and several amounts of taxes assessed against the bank and its

shareholders exceeds $2,000, it is clear that the controversy does not embrace a matter in dispute exceeding that sum which, under the statute, is a requisite to the jurisdiction; and, being without jurisdiction, all that the court can do is to dismiss the bill for that reason."

*Holt v. Bergevin*, 60 Fed. 1, was a case where two parties having claims for labor performed for the same employer, joined their claims in a single suit to enforce a lien therefor, by virtue of the law of Idaho, which allows any number of parties to join in the same action where they claim liens against the same property. The claims arose, however, under separate contracts of employment and were supported by separate evidence. On the petition of defendants the cause, which was begun in the State Court, was removed to the Federal Circuit Court. There the complainants moved that the case be remanded on the ground that as neither claim amounted to $2,000, though the aggregate of the two exceeded that amount, the United States Circuit Court had no jurisdiction. This motion was sustained in a well-reasoned opinion by Beatty, District Judge, reviewing the authorities of this court; the conclusion being reached that, "while all the complainants asked a lien for the security of their several claims against the same property of the defendants, they have no *joint* interest therein." The opinion further declares that notwithstanding all of the findings or judgments may be framed into a single document, yet "for each there must be the equivalent of a separate judgment."

In *Putney v. Whitmire*, 66 Fed. 385, the authorities are also carefully reviewed and the conclusion there reached that a bill cannot be maintained which is filed by several creditors against the same debtor, to set aside certain mortgages on a stock of goods of which he is still in possession, it appearing that the claim of no creditor exceeded $2,000, and that none had been re-

duced to judgment. The Circuit Court ruled that the case fell within that classification of cases that several and distinct claims cannot be united in order to confer jurisdiction.

In the case of *Busey v. Smith*, 67 Fed. 13, the question arose in the Circuit Court of the District of Indiana under these facts: Mary E. Busey, being a creditor of the estate of William Smith, deceased, filed a bill in the Circuit Court to subject to the payment of her claim the interest of the several defendants in the estate of the deceased, by virtue of a statute of Indiana, which provides that the heirs, devisees and distributees of a decedent shall be liable to the extent of the property received by them from such decedent's estate, to any creditor whose claim remains unpaid. The defendants moved to dismiss the cause for want of jurisdiction, and they placed their motion on the ground that it appeared on the face of the bill that the liability of no single defendant equalled $2,000. This motion to dismiss was sustained by Baker, District Judge, such action being based on the authorities, heretofore referred to, of this court. In reaching this conclusion, the Judge says:

"It is insisted that because a suit may be brought jointly against all the heirs that the complainant may recover a joint and several judgment against all the defendants; and as the aggregate amount recoverable from them exceeds $2,000, the present bill is within the jurisdiction of the court. This contention seems to be unfounded. It is necessary to join all the heirs in order to obtain a decree fixing the several liability of each, but this does not vary or enlarge the extent of their several liability. The obligation of each still remains several and not joint. * * * Clearly each of the heirs in this case is not liable for the whole debt, and therefore their liability cannot be joined, in whatever form the suit may be brought. The complainant in her prayer

for relief expressly recognizes that her cause of action against each is several, for she asks that each be decreed to pay the amount received by him. It is settled that neither co-defendants nor co-complainants can unite their separate and distinct liabilities for the purpose of making up the amount necessary to give this court jurisdiction. * * * And as the liability of each is less than $2,000, it follows that the court is without jurisdiction."

In *Smithson v. Hubbell,* 81 Fed. 593, the facts were these: The Kittitas Valley National Bank was placed in the hands of a receiver appointed by the Comptroller of the Currency, as an insolvent banking institution. Complainant Smithson had proved up and established his claim against said insolvent institution for the amount of $1,764.05, no part of which was paid. The Oregon National Bank also established a claim against the assets of the insolvent institution, and afterwards passed into the hands of a receiver. A dividend was declared and ordered paid, and the purpose of the proceeding by Smithson was to enjoin the payment of the dividend to the receiver of the Oregon National Bank, on the ground that its claim was fraudulent as to other creditors. The bill, which purported to be filed for the complainants and all others, averred that there were other creditors having claims against the insolvent amounting to over $20,000, exclusive of the claim charged to be fraudulent. The defendants disputed the jurisdiction of the court to entertain the bill, on the ground that the amount in dispute was less than $2,000. The complainant contended that inasmuch as the bill was being prosecuted not only for himself, but for others having claims amounting in the aggregate to more than $2,000, jurisdiction obtained. The court, however, declined to entertain jurisdiction and dismissed the bill, saying:

"I am constrained, however, by the decisions of the Supreme Court of the United States, to hold that the amount of indebtedness to the complainant, which is less than $2,000, must be taken as the amount involved, for the purpose of determining the question of jurisdiction. In suing as a representative of a class of persons similarly situated, and having similar rights, the complainant *brings into the cause only the question to be determined;* and he is not to be considered as bringing into the case the separate claims and demands of other creditors. The law does not confer upon him the authority of an agent of other creditors for that purpose, nor authorize him to augment his own distinct claim for the purpose of making a claim within the jurisdiction of the United States Circuit Court. The rule in such cases laid down by the Supreme Court of the United States in the case of *Clay v. Field*, 138 U. S. 464-483, 11 Sup. Ct. 419, 425, is as follows:

" 'The general principle observed in all is that if several persons be joined in a suit in equity or admiralty, and have a common and undivided interest, though separable as between themselves, the amount of their joint claim or liability will be the test of jurisdiction; but where their interests are distinct, and they are joined for the sake of convenience only, and because they form a class of parties whose rights or liabilities arose out of the same transaction, or have relation to a common fund or mass of property sought to be administered, such distinct demands or liabilities cannot be aggregated together for the purpose of giving this court jurisdiction by appeal, but each must stand or fall by itself alone.'

"In that case the question was as to the jurisdiction of the Supreme Court, but the same principle governs in cases where the jurisdiction depends upon the amount in controversy, whether the question is as to the jurisdiction of the Supreme Court, or of a Circuit Court.

This is made clear by the opinion of Mr. Justice Brown, in the case of *Walter v. Railroad Co.*, 147 U. S. 370-374, 13 Sup. Ct. 349. The following excerpt bears directly upon the point: 'It is well settled in this court that when two or more plaintiffs, having several interests, unite, for the convenience of litigation, in a single suit, it can only be sustained in the court of original jurisdiction, or on appeal in this court, as to those whose claims exceeded the jurisdictional amount; and that, when two or more defendants are sued by the same plaintiff in one suit, the test of jurisdiction is the joint or several character of the liability to the plaintiff. This was the distinct ruling of this court in *Seaver v. Bigelow*, 5 Wall, 208; *Russell v. Stansell*, 105 U. S. 303; *Trust Co. v. Waterman*, 106 U. S. 265, 1 Sup. Ct. 131; *Hawley v. Fairbanks*, 108 U. S. 543, 2 Sup. Ct. 846; *Stewart v. Dunham*, 115 U. S. 61, 5 Sup. Ct. 1163; *Gibson v. Shufeldt*, 122 U. S. 27, 7 Sup. Ct. 1066; *Clay v. Field*, 138 U. S. 464, 11 Sup. Ct. 419.'

"The application for an injunction will be denied and the case dismissed, for the reason that the case is not within the jurisdiction of this court."

These cases sufficiently demonstrate the law upon the subject and illustrate its application to various states of fact.

The question then is, within which classification does the case at bar fall? Is it a case where the claims of the several complainants may be united together so as to give jurisdiction, or is it a case where jurisdiction will only obtain provided some one of the claims exceeds two thousand dollars?

It is first to be remembered that this is a case of local assessments or special taxation, and that, therefore, no aid is furnished by a reference to cases bearing upon the exercise of general taxation. Where a complaint is filed by a taxpay-

ing citizen to restrain an assessment of general taxes, or where a tax-paying citizen files complaint to enjoin the illegal disbursement of public funds, it may be said that he appears in a representative capacity on behalf of the general public, and that, therefore, jurisdiction is not to be measured by his own individual interest in the matter. He comes forward as the champion of the community, of the public in general. Again, an assessment of general taxes is a single act; there is but one assessment, and in an action to enjoin it it is immaterial how that general assessment may affect the particular individual or his particular property.

But local assessments stand on a different footing. While the power to make local assessments for local improvements is referable to the taxing power of the State, a distinction is everywhere made between special taxation and taxes generally. The latter is an exercise of sovereignty. General taxes are demanded by government in its sovereign capacity. Special taxes are laid upon real property as a compensation for some public improvement which specially benefits that property beyond the benefits in general to property throughout the municipality or the community, and are an equivalent paid by the property benefited for its enhancement in value.

Thus it is said in *Elliott on Roads and Streets*, page 370, that:

"A distinction is made between local assessments and taxes levied for general revenue purposes. The question has been before the courts time and time again, and the almost unruffled current of judicial opinion is that an assessment for a local improvement is not a tax within the meaning of the constitutional provisions requiring uniformity of taxation. Local assessments are not ordinary taxes levied for the purpose of sustaining the government, but they are charges laid upon individual

property because the property upon which the burden is imposed receives a special benefit which is different from the general one which the owner enjoys in common with others as a citizen of the commonwealth."

And so it is generally held that an exemption from taxation does not include an exemption from local assessment. *Dillon's Municipal Corporations,* Section 777; *Welty on Assessments,* Section 170.

And so it has been declared in Missouri that constitutional or statutory provisions exempting property from taxation do not apply to or include special local assessments. *Sheehan v. Good Samaritan Hospital,* 50 Mo. 155; *Farrar v. St. Louis,* 80 Mo. 379; *City of Clinton v. Henry County,* 115 Mo. 557.

Now while the bill of complaint in this case does not so charge, the impression is sought to be left that the assessment for the cost of improving Whittier street, in question, was made as one entire assessment, to be subsequently subdivided and apportioned against the various lots of land bordering upon the street. The fact is, however, and that fact sufficiently appears upon even a casual reading of the bill, that no lump assessment is or can be made under the provisions of the charter of the City of St. Louis, or the terms of the ordinance under which the work of improvement was done. Upon the completion of the work the President of the Board of Public Improvements is directed to compute the cost of the work, and, having ascertained the cost, is thereupon required to make *a separate and distinct assessment against each separate lot of land,* for that much of the cost ascertained as the front feet of the lot bear to the total number of front feet of the improvement.

That such is the duty of the President of the Board is not only plain from the language of the charter and the ordinance, but such is his duty under the decisions of the Missouri courts, which hold that under the charter,

and under these improvement ordinances, the assessment is a *separate assessment* against each lot. *Fowler v. St. Joseph,* 37 Mo. 228; *St. Louis v. Clemens,* 49 Mo. 532; *Kemper v. King,* 11 Mo. App. 116.

And even though contiguous lots may belong to the same owner they must be separately assessed, and must not be included in one bill or certificate. *Miller v. Anheuser,* 4 Mo. App. 436.

And it has been held that where a local assessment or a special tax bill embraces a charge against two adjoining lots, it is absolutely void, though the title to both lots be in the same person. *Kemper v. King, supra.*

It is therefore somewhat misleading to suggest to this court that the assessment for street construction under the St. Louis charter is a single act, and that all the owners of property chargeable with the cost of the improvement are *jointly* interested therein. The fact is that there are as many assessments made, and required to be made, as there are lots of land abutting the improvement.

It is not pretended that the complainants in this case have any joint title, or title in common, to any of the lots affected by these assessments. They are owners in severalty. None is interested in the lot owned by any of the others. A lien against the lot of complainant Wheless cannot concern or affect complainant Barnhart. A sale under assessment of the property of complainant Hill could work no injury to complainant Burnett. In other words, the interests and the rights of complainants are entirely independent and distinct and apart from each other. It is true that all are interested in the question or questions of law which are involved, and in the outcome of the litigation; but this, of course, was true in every other case in which the court has held that there could be no aggregation of interests in order to give jurisdiction. Such interest, however, is not the

common, the joint, the undivided interest, in the matter in dispute, which the law requires in order to permit the casting together of interests in order to give jurisdiction. Each complainant has an interest in the legal propositions, but that is merely collateral, or indirect. Those who have not come forward and joined in the bill have the same interest of that kind as those who have joined, and yet it would never be claimed that if the aggregated amount of the interests of those who are parties to the bill did not equal two thousand dollars, that the matter could be mended by adding thereto the pecuniary interest of those who did not chose to come in.

Another test, suggested in some of the opinions to which reference has been made, is whether the complainants were bound to unite in the bill, or whether it was merely permissible to them to unite. In other words, were they necessary parties or merely proper parties. Where a claim is joint all the owners thereof must unite in an action to enforce it or to protect it. Every party interested is a necessary party. In the case at bar it is obvious that the complainants joined merely for convenience and to save costs. It was perfectly competent for them to do so, because it is well established that in an equity proceeding of this nature parties may join for convenience and in order to avoid a multiplicity of suits, but such joinder was not compulsory here. The question at issue could as well have been raised by bill filed by any one complainant alone as well as by bill filed by all together.

From the fact that pains were taken to have the bill aver that the assessment against the lots of complainant Barnhart would exceed the sum of two thousand dollars —an averment which, although verified by affidavit to the bill, was admitted in open court to be unfounded in fact—it would seem that counsel for complainants were of the impression, when first entering upon this litiga-

tion, that the assessments against the various lots could not be united for the purpose of conferring jurisdiction upon the Circuit Court, and that it was necessary to make the allegation in order to support the jurisdiction of the court. Otherwise it is difficult to understand why the allegation was made.

Finally, we refer the Court to the opinion which was filed in the case below (96 Fed. 865), as affording as clear and as comprehensive a discussion of the law bearing upon the case as can be submitted, and as fully supporting the view that the interests of the complainants are distinct and separate, and not of that class which permits them to be aggregated in the determination of the question of jurisdiction.

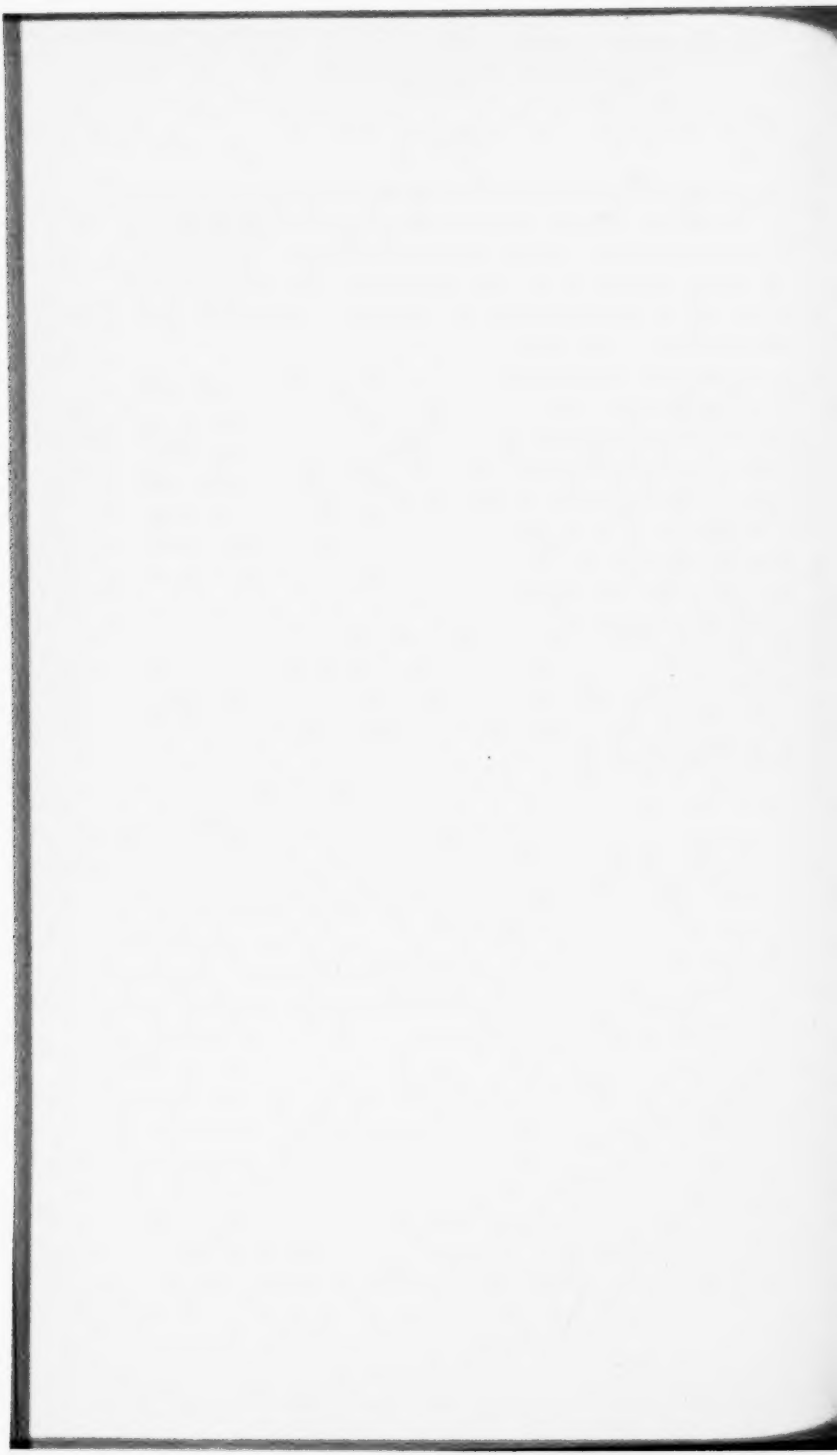
For the reason that the court below correctly understood and properly applied the law, and that its action in dismissing the bill for want of jurisdiction was right and proper, we respectfully submit that its decree should be affirmed.

B. SCHNURMACHER,
CHAS. CLAFLIN ALLEN,

*Counsel for Appellees, The City of St. Louis, and Robert E. McMath, President of the Board of Public Improvements.*

EDWARD C. KEHR,

*Counsel for Appellee, The Gilsonite Roofing & Paving Co.*



# Supreme Court of the United States.

No. 161.—October Term, 1900.

Joseph Wheless, William M. Reed, Halstead Burnet, et al., Appellants,
vs.
The City of St. Louis et al.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

[February 25, 1901.]

In this case the jurisdiction of the Circuit Court was in issue, and the question of jurisdiction was certified.

The question was whether the matter in dispute exceeded, exclusive of interest and costs, the sum of two thousand dollars. The Circuit Court held that jurisdiction did not exist, and dismissed the bill. 96 Fed. Rep. 865.

The suit was brought by Joseph Wheless and others against the City of St. Louis, the President of the Board of Public Improvements of that city, and the Gilsonite Roofing and Paving Company, to restrain the city and the board from levying or assessing the costs and expenses of improving a public street whereon complainants' property abutted, against the property, and to enjoin the paving company from demanding or receiving from the city any special tax bills issued therefor. The certificate of the Circuit Court states the facts thus:

"That the above entitled cause came on to be heard by the court at, to wit, the September, 1899, term of the court, upon the application for a temporary injunction, as prayed in the bill, it being alleged in said bill that complainants are severally the owners of certain and nearly all the lots of land abutting on Whittier street, between Washington boulevard and Finney avenue, in the city of St. Louis; that the defendant city, acting under the provisions of its charter and ordinances, had entered into a contract with the defendant paving company to improve said street in front of complainants' property, and said company was engaged in doing the work, which was a public improvement; that the cost of making said improvement is, according to the terms of said charter, ordinance, and contract, a charge upon complainants' abutting property, and is about to be levied and assessed against it as a special tax, according to the frontage of said lots on said street, and special tax bills are about to be issued separately against each lot of complainants, which would be liens upon their said property and subject the same to being sold to satisfy said special assessment; which assessment and levy, it is averred, are in violation of complainants' rights under the Federal Constitution. Wherefore an injunction was prayed to restrain said city from levying and assessing the cost of said public improvement against complainants' property and from

issuing special tax bills against them for the same, and for a decree declaring said charter, ordinance, and contract provisions void; that the cost of said improvement, which was about to be assessed and levied against all the abutting property, is largely in excess of the sum of $10,000.

"Defendants filed a plea to the jurisdiction of the court, supported by an affidavit showing that the amount of special tax which would be assessed and levied against the property of any one of the complainants severally would not exceed $1,400, and would not be an amount equal to $2,000, and that hence the matter in dispute between the parties was not of the sum or value necessary to give jurisdiction to the Circuit Court of the United States, and that the bill should be dismissed for want of jurisdiction.

"Complainants demurred to the said plea and submitted the question of jurisdiction thus raised to the determination of the court, and thereupon the court, after due hearing and consideration, did overrule said demurrer, the court being of the opinion, as set out in the written opinion filed in said cause and accompanying this appeal, that the court was without jurisdiction of said cause in respect of the sum or value in dispute, and upon complainants confessing the matter of the plea in point of fact and refusing to plead further, their said bill was by the court dismissed for want of jurisdiction."

Mr. Chief Justice FULLER delivered the opinion of the Court:

The bill alleged that defendants were about, under the charter of the city of St. Louis, and the ordinance authorizing and directing the improvement in question, to impose the cost thereof upon the several lots of ground adjoining the improvement, in the proportion that the frontage of each lot bore to the total frontage thereon. And it was admitted that the various lots of land threatened with assessment were owned in severalty; that no one complainant was interested in the lot of any other; and that the assessment against no one lot would amount to two thousand dollars. We think that the Circuit Court rightly held that it was without jurisdiction under the circumstances. The general rule was thus stated by Mr. Justice Bradley in *Clay* v. *Field*, 138 U. S. 464, 479: "The general principle observed in all is that if several persons be joined in a suit in equity or admiralty, and have a common and undivided interest, though separable as between themselves, the amount of their joint claim or liability will be the test of jurisdiction; but where their interests are distinct, and they are joined for the sake of convenience only, and because they form a class of parties whose rights or liabilities arose out of the same transaction, or have relation to a common fund or mass of property sought to be administered, such distinct demands or liabilities cannot be aggregated together for the purpose of giving this court jurisdiction by appeal, but each must stand or fall by itself alone."

Accordingly it has often been held that the distinct and separate interests of complainants in a suit for relief against assessments cannot be united

for the purpose of making up the amount necessary to give this court or the Circuit Court jurisdiction. *Ogden City* v. *Armstrong*, 168 U. S. 224; *Russell* v. *Stansell*, 105 U. S. 303; *Walter* v. *Railroad Company*, 147 U. S. 370.

The "matter in dispute" within the meaning of the statute is not the principle involved, but the pecuniary consequence to the individual party, dependent on the litigation, as, for instance, in this suit the amount of the assessment levied, or which may be levied, as against each of the complainants separately. The rules of law which might subject complainants to or relieve them from assessment would be applicable alike to all, but each would be so subjected, or relieved, in a certain sum, and not in the whole amount of the assessment. If a decision on the merits were adverse to the assessment, each of the complainants would be relieved from payment of less than two thousand dollars. If the assessment were sustained, neither of them would be compelled to pay so much as that.

It is true that the assessment has not been made, but the charge is that it is threatened to be made, and the purpose of the bill is to enjoin proceedings about to be taken to that end. We agree with the Circuit Court that in these circumstances there is no force to the suggested distinction between a case where the assessment has not in fact been made and a case where it has already been made. When made, neither one of these complainants will be called upon to pay a sum equal to the amount of two thousand dollars, nor will any one of the lots be assessed to that amount.

*Decree affirmed.*

True copy.

Test:

*Clerk Supreme Court, U. S.*